

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

-and-

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Respondent

THIRD REPORT OF THE RECEIVER

APRIL 30, 2021

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INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (the “**Court**”) dated February 12, 2020 (the “**Appointment Order**”), RSM Canada Limited was appointed receiver (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Fernwood Developments (Ontario) Corporation (“**Fernwood**” or the “**Debtor**”) acquired for, or used in relation to a business carried on by Fernwood, including all proceeds thereof (the “**Property**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. The Appointment Order, together with other documents related to the receivership proceeding, has been posted on the Receiver’s website, which can be found at <http://www.rsmcanada.com/fernwood-developments-ontario-corporation>.
3. Pursuant to the Appointment Order, the Court authorized the Receiver to:
 - a. market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
 - b. sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with Court approval in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amounts set out in paragraph 3(k)(i) of the Appointment Order; and

- c. apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property.
4. On June 30, 2020, the Receiver issued its first report to the Court (the “**First Report**”) for the purpose of, among other things, seeking an order approving the Receiver’s proposed sale process for the Property (the “**Sale Process**”). A copy of the First Report (without appendices) is attached hereto and marked as **Appendix “B”**.
5. On July 7, 2020, the Court granted an order, among other things, approving the Sale Process (the “**Approval Order**”). A copy of the Approval Order is attached hereto and marked as **Appendix “C”**.

PURPOSE OF THE THIRD REPORT

6. The purpose of this third report of the Receiver (the “**Third Report**”) is to:
 - a. report to the Court on the execution and results of the Sale Process; and
 - b. request that the Court grant an order:
 - i. authorizing the Receiver to enter into an asset purchase agreement (the “**APA**”) with 2815864 Ontario Inc. (the “**Purchaser**”) and approving the sale transaction contemplated thereby (“**Transaction**”);

- ii. vesting in the Purchaser the Debtor's right, title and interest in and to the "Purchased Assets" (as defined in the APA), free and clear of all claims and encumbrances (other than permitted encumbrances), upon delivery of a certificate by the Receiver to the Purchaser;
- iii. approving the Receiver's conduct and activities to April 30, 2021, as set out in the Third Report;
- iv. authorizing and directing the Purchaser to pay the Receiver the Priority Payables (as defined in the Sale Agreement) to be held in trust by the Receiver pending further order of this court or the consent of both MarshallZehr Group Inc. and the respective lien claimant for whom the Priority Payable is being held;
- v. sealing Confidential Appendix "1" to this Third Report pending the closing of the Transaction or further order of the Court; and
- vi. such further and other relief as counsel may request and this Honourable Court may permit..

TERMS OF REFERENCE

7. In preparing this Third Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "**Information**"). Certain of the information contained in the Third Report may refer to, or is based on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Court in this matter, the Receiver has relied

on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

8. Unless otherwise stated, all dollar amounts contained in the Third Report are expressed in Canadian dollars.

BACKGROUND

9. Fernwood was the developer of a 94 residential unit stacked townhouse phased condominium complex known as Schoolhouse Barrie (formerly known as Georgian Meadows), located in Barrie, Ontario (the “**Development**”).
10. The Development was marketed as an investment opportunity, with the intention that purchasers would acquire the units and lease them to students at Georgian College in Barrie, Ontario.
11. Each of the three phases of the Development consists of two buildings, for a total of six buildings. Phases 1 and 2 are complete and Fernwood has sold all but 26 residential units (collectively, the “**Residential Units**”) and 26 parking spaces (collectively, the “**Parking Spaces**”) in these two phases of the Development.

12. Each of the Residential Units consists of a living area, 4 bedrooms and 4 bathrooms. There currently are 49 tenants of the Residential Units paying monthly rent in aggregate of approximately \$30,625.
13. Phase 3 of the Development, which consists of 32 residential units (the “**Phase 3 Lands**”), is incomplete and in various stages of construction. The residential units in Phase 3 have yet to be sold by Fernwood and are not subject to agreements of purchase and sale and have no tenants.
14. MarshallZehr Group Inc. (“**MarshallZehr**”) provided Fernwood with construction financing of \$19.95 million (the “**Loan**”) pursuant to a commitment letter dated September 20, 2016, as amended. The Loan was repayable on demand and matured on September 1, 2019.
15. MarshallZehr’s security over Fernwood’s property and assets includes a charge/mortgage in the principal amount of \$22 million (the “**Charge**”) and a general assignment of leases and rents registered on title to the Residential Units, the Parking Spaces and the Phase 3 Lands (collectively, the “**Real Property**”), and a general security agreement (the “**GSA**”).
16. Paliare Roland Rosenberg Rothstein LLP (“**Paliare Roland**”), the Receiver’s independent counsel, has provided an opinion on the validity and enforceability of the security of MarshallZehr (the “**Legal Opinion**”), which indicates that, subject to the usual qualifications and assumptions, MarshallZehr holds a valid and perfected security interest in all of Fernwood’s personal property pursuant to the GSA, and the Charge with respect to Real Property constitute a valid and

enforceable first registered charge/mortgage. A copy of the Legal Opinion is attached hereto and marked as **Appendix “D”**.

17. The Receiver has been advised that Fernwood is indebted to MarshallZehr in excess of \$26.0 million for principal, interest, fees and costs (collectively, the **“Secured Debt”**).

SALE PROCESS

18. In accordance with the Approval Order, the Receiver carried out the Sale Process as follows commencing in July, 2020:
 - a. the Receiver contacted approximately 62 parties and provided a copy of the marketing brochure for the Real Property;
 - b. the Receiver advertised the Sale Process on July 14, 2020 in the Financial Post and on July 23, 2020 in the Barrie Advance; and
 - c. 23 parties signed a non-disclosure agreement and received a confidential information memorandum and access to a data room.
19. The Receiver extended the bid deadline from July 30, 2020 to August 14, 2020. The Receiver received two offers for the Real Property, which are summarized in a chart attached hereto and marked **Confidential Appendix “1”**.
20. At the outset of the Sales Process, MarshallZehr also informed the Receiver that it wished to make a credit bid offer for all of the Property.

21. As set out in Confidential Appendix "1", the two offers were significantly less than the amount that Fernwood is indebted to MarshallZehr, and were subject to due diligence conditions.
22. As a result, the Receiver decided to reject the two offers. Based on its experience conducting the Sales Process, the Receiver concluded at the time that there was no reasonable prospect of selling the Real Property for an amount that could possibly come close to paying out MarhsallZehr's indebtedness.
23. At the same time, MarshallZehr continued to express an interest in acquiring Fernwood's assets through a credit bid. In the Receiver's view, this was the most desirable approach. Accordingly, the Receiver began discussions with MarshallZehr on the structuring of such a transaction.
24. Given the complexities of a potential credit bid, it took time to work through numerous issues and scenarios including, among others, whether MarshallZehr would provide financing to the Receiver to complete the construction of the Phase 3 Lands or whether MarshallZehr would acquire the Real Property in its current state. Ultimately, MarshallZehr concluded that it wished to pursue a credit bid transaction with the Real Property in its current state. This was also the Receiver's preferred option. The Receiver seeks an order sealing Confidential Appendix "1", as it contains commercially sensitive information about the offers received during the Sale Process. In the Receiver's view, this information should remain confidential until such time as the Transaction closes. In the event that the Transaction is not approved by the Court or fails to close and the Property needs

to be re-marketed, the disclosure of the commercially sensitive information in Confidential Appendix “1” could be prejudicial to any future sale process that may be required.

APA

Summary

25. The Purchaser has submitted a form of APA to the Receiver, a copy of which is attached hereto and marked as **Appendix “E”**. The Receiver has not yet signed the APA, pending Court authorization for the Receiver to enter into the APA. The Purchaser is a newly incorporated company that is affiliated with MarshallZehr. A summary of the Transaction is as follows:

- a. **Purchase Price**: is in excess of \$25.25 million and is comprised of (i) approximately \$24.93 million of the Secured Debt, (ii) an amount necessary to satisfy all “Priority Payables” (as defined in the APA), (iii) all amounts secured by the Receiver’s Charge under the Appointment Order and a further \$150,000 as an estimate of the fees and expenses to be incurred by the Receiver up to the Receiver’s discharge, and (iv) assumption of certain liabilities, including the amount secured by the Receiver’s Borrowings Charge under the Appointment Order
- b. **Purchased Assets**: substantially all of Fernwood’s property, assets and undertaking including the Real Property, the Litigation (as defined below) and the Pensio Cause of Action (as defined below);

- c. **Closing**: the first business day following the expiry of the applicable appeal period for the approval and vesting order
 - d. **Representations and Warranties**: “as is, where is” transaction with limited representations and warranties
 - e. **Material Condition**: issuance of an approval and vesting order
26. Some stakeholders have raised the issue that there has been an increase in the residential property market, which may result in an increase in value of the units owned by Fernwood. Based on the results of the Sale Process, there is no reasonable prospect of generating a superior offer to the APA. As a result, the Receiver is firmly of the view that it is not in the best interests of Fernwood’s creditors to undertake the significant time and cost to run an additional sale process at this time, notwithstanding an increase in the residential property market, if any.

Claims

27. The Purchased Assets includes Fernwood’s interest in:
- a. litigation commenced by Fernwood against MarshallZehr on the day before the Receiver’s appointment (the “**MZ Litigation**”); and
 - b. any cause of action (the “**Pensio Cause of Action**” and with the MZ Litigation, the “**Litigation Claims**”) that Fernwood may have against Pensio Property Management Group Inc., Ai Guarantee Inc., Nationwide Rentsure Canada Corp., and any affiliated parties (collectively, “**Pensio**”).

28. With respect to the MZ Litigation, it was commenced by statement of claim issued on February 11, 2020, a copy of which is attached hereto and marked as **Appendix “F”**.
29. The Receiver understands that the return date of MarshallZehr’s receivership application was originally scheduled for February 10, 2020. At the request of counsel to Fernwood, the hearing date was adjourned from February 10, 2020 to February 12, 2020. As set out above, the statement of claim in respect of the Litigation was issued on February 11, 2020.
30. The Receiver further understands that Fernwood did not oppose MarshallZehr’s application for the appointment of the Receiver.
31. The Receiver has not yet conducted an independent review or investigation into the allegations made by Fernwood in the MZ Litigation. As a result, the Receiver is not in a position to comment on whether there is any merit to the MZ Litigation.
32. On February 9, 2020, Paliare Roland sent a letter to counsel to Fernwood and the former principals of Fernwood to advise them of this motion (the “**February 9th Letter**”), which was originally returnable on February 24, 2021. Paliare Roland requested that, before the APA was finalized, the former principals of Fernwood confirm whether they have any interest in acquiring the MZ Litigation by 5 pm on February 12, 2020 and propose a purchase price. A copy of the February 9th Letter is attached hereto and marked as **Appendix “G”**.

33. Fernwood's counsel responded to Paliare Roland on February 12, 2021 to advise, among other things, that it needed more time to consider its client's position. Fernwood's counsel also sought confirmation that the Receiver would hold the sale of the MZ Litigation in abeyance. A copy of Fernwood's counsel's letter dated February 12, 2021 is attached hereto and marked as **Appendix "H"**.
34. On February 18, 2021, Paliare Roland responded to advise Fernwood's counsel that the motion was adjourned to March 12, 2021 and that, accordingly, their clients now had more than sufficient time to consider whether they had any interest in acquiring any of the Litigation Claims. Counsel requested that any offer for the Litigation Claims be submitted by February 25, 2021. A copy of Paliare Roland's letter dated February 18, 2021 is attached hereto and marked as **Appendix "I"**.
35. On February 25, 2021, Fernwood's counsel responded with an offer for the Litigation Claims (the "**Zukowski Offer**"). A copy of the Zukowski Offer is attached hereto as **Appendix "J"**.
36. The Zukowski Offer sets out that the amount of the offer for the Litigation Claims, based on certain terms and conditions, is: (i) Mr. Zukowski will pay the Receiver \$10,000; and (ii) 25% of the net proceeds of any settlement or final judicial determination of the Litigation Claims shall be paid to the Receiver upon receipt by the Plaintiff.
37. As is evident from the terms of the Zukowski Offer (including the fact that any meaningful realization is contingent on the successful prosecution of the Litigation

Claims), it is clear that, on an aggregate basis, the Zukowski Offer is materially lower than MZ's offer for all of the Purchased Assets.

38. Based on the purchase price under the APA and the offers received, the Receiver is satisfied that fair consideration is being provided by the Purchaser for the Purchased Assets, including the Litigation Claims, even if the MZ Litigation and Pensio Cause of Action have merit.
39. As stated above, it is the Receiver's view that the aggregate consideration for all of the Purchased Assets (plus the funding of the Potential Priority Claims, as defined and described below) is materially in excess of any realization that the Receiver could expect to achieve if the assets were marketed and sold separately. The terms of the Zukowski Offer for the Litigation Claims only reinforce the Receiver's conclusion and recommendation. The Receiver's counsel set out this view in a letter to Fernwood's counsel dated March 30, 2021, rejecting the Zukowski Offer (the "**March 30 Letter**"). The March 30 Letter is attached hereto as **Appendix "K"**.
40. Fernwood's counsel responded in a letter dated April 7, 2021, attached hereto as **Appendix "L"**.
41. With respect to the Pensio Cause of Action, as has been previously reported to the Court, Pensio acted as property manager, which included collecting rents and managing the units of the Development. In addition, Pensio provided a rental income guarantee, supported by a rental income insurance policy, to unit owners.

42. As set out in the First Report, the Receiver terminated Pensio's engagement in respect of the management of the Residential Units effective March 31, 2020. Pensio terminated its rental guarantee and rental income insurance policy to unit owners shortly thereafter, which the Receiver advised Fernwood's counsel of in the March 30 Letter.
43. There is an outstanding issue between Fernwood and Pensio as to whether Pensio has remitted all collected rents to Fernwood. This issue gives rise to the Pensio Cause of Action which, as stated above, is included in the Purchased Assets in the APA.

Priority Payables

44. Under the APA, on closing, the Purchaser is required to satisfy any amount that has priority over MarshallZehr's security. In addition to the claims discussed below, there is less than \$3,000 owed to Canada Revenue Agency in connection with an employee source deduction deemed trust amount.
45. Six (6) parties have registered construction liens against the Phase 3 Lands with respect to goods and/or services supplied to Fernwood. Each of the lien claimants contracted directly with Fernwood.
46. The Receiver understands that MarshallZehr's Charge was registered on title to the Phase 3 Lands prior to the time the lien claimants started working on the Phase 3 Lands.

47. The Receiver has been advised by Paliare Roland that under the *Construction Act*, construction lien claimants have priority over mortgages that secured the financing of an improvement to the extent, among other things, of any deficiency in the holdbacks that an owner was required to retain. The *Construction Act* required Fernwood to maintain a basic holdback equal to ten (10) per cent of the price of the services or materials supplied under each contract. As of the date of the Receiver's appointment, Fernwood was not retaining any holdback funds.
48. The Receiver has not yet determined the validity, enforceability, quantum or priority of any of the construction liens.
49. Rather, the Receiver has only attempted to determine the maximum amount of each lien claimant's potential priority claim over the Charge (the "**Potential Priority Claims**"). The Purchaser has agreed to pay the Potential Priority Claim amounts to the Receiver to be held in trust. Accordingly, in the Receiver's view, the lien claimants will be protected in the event their priority claims are ultimately established.

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50. The Receiver has calculated the Potential Priority Claims as follows:

<u>Lien Claimant</u>	<u>Quantum of Lien Claims</u>	<u>Potential Priority Claim (10% of value of services provided. Amount based on total contract value as stated in liens)</u>
Duncan Drywall	\$178,195.00 plus HST	\$ 24,000.00 plus HST
Ground Electrical Services	\$106,939.80	\$ 10,693.98
Jeff McKeever Plumbing	\$173,489.63	\$ 21,198.96
Priority Mechanical Services Ltd.	\$231,154.55	\$107,098.77
Nezz Electric	\$122,285.30	\$ 17,924.74
Mack Construction	\$ 28,740.00	\$ 2,874.00

51. Paliare Roland has been in contact with counsel to the lien claimants to confirm the quantum of the Potential Priority Claims.

52. Paliare Roland has informed the Receiver that counsel for Nezz Electric, Ground Electrical Services, Mack Construction, and Priority Mechanical Services have each advised that they agree with the Potential Priority Claim calculations in respect of their clients.

53. Two of the lien claimants, Duncan Drywall and Jeff McKeever Plumbing (“**JMP**”), are represented by Paul Daffern of Paul J. Daffern Law Firm. Paliare Roland has advised the Receiver that Mr. Daffern does not agree with the Potential Priority

Claim calculations in respect of his two clients. A copy of Paliare Roland's correspondence with Mr. Daffern is attached hereto and marked as **Appendix "M"**.

54. In the case of JMP, the Receiver notes that JMP has not even made a claim for priority in its statement of claim with respect to its lien, nor did JMP name MarshallZehr, the mortgagee, as a party to the claim. Paliare Roland advises that both are required to validly assert priority over MarshallZehr's Charge. In the circumstances, therefore, the Receiver proposes that the Purchaser pay to the Receiver in trust on closing \$21,198.96 in respect of JMP's Potential Priority Claim, being 10% of the value of services supplied as indicated in the chart above.
55. In the case of Duncan Drywall, while Paliare Roland has advised Mr. Daffern that it is not aware of circumstances in which Duncan Drywall's priority claim could exceed the Potential Priority Claim of \$24,000 (10% of the value of services supplied), to date Duncan Drywall maintains that it has priority over the Charge for the full amount of its lien of \$178,195, plus HST. In the circumstances and in the absence of any further agreement between the parties, on closing of the Transaction the Purchaser will pay to the Receiver in trust the full amount of Duncan Drywall's lien claim of \$178,195, plus HST.
56. The amounts being paid by the Purchaser to the Receiver in trust on closing are on a without prejudice basis to any argument the Purchaser and/or MarshallZehr may make as to the validity, enforceability, quantum and/or priority of the construction liens.

57. Paliare Roland was also contacted by Dooley Lucenti LLP (“**DL LLP**”), counsel to 2122201 Ontario Ltd. carrying on business as McKick Masonry (“**McKick**”), and Wolfenden Construction Ltd. (“**Wolfenden**” and together with McKick, the “**Trust Claimants**”). Neither of the Trust Claimants registered a construction lien against the Phase 3 Lands. Instead, the Trust Claimants take the position that any proceeds of sale of the Phase 3 Lands are trust funds under section 9(1) of the *Construction Act* for the benefit of parties that provided goods and/or services to Fernwood in connection with the Phase 3 Lands. A copy of DL LLP’s December 21, 2020 letter is attached hereto and marked as **Appendix “N”**.
58. Paliare Roland spoke on several occasions with DL LLP and exchanged email correspondence relating to the Trust Claimants’ claims, a copy of which email correspondence is attached hereto and marked as **Appendix “O”**.
59. As set out in the correspondence between counsel, McKick claims an amount owing of \$73,961 and Wolfenden claims an amount owing of \$36,914.
60. The Receiver has been advised by Paliare Roland that even if the Trust Claimants can establish their claim (which the Receiver has not yet reviewed or considered), such claims will not have priority over the Charge to the sale proceeds of land.
61. Specifically, section 9(1) of the *Construction Act* provides that any trust fund arises only after the payment of any existing mortgage indebtedness (and reasonable expenses from the sale). Given that the transaction contemplated in the APA will not result in the full repayment of all of the mortgage indebtedness, there will not be any recovery of proceeds for the owner, Fernwood, to which a trust claim might

apply. As a result, the Receiver is satisfied that the Trust Claimants' claims do not need to be addressed in the APA, nor does the Receiver propose to otherwise hold or provide for such amounts.

62. Paliare Roland communicated the Receiver's position on the trust claims to DL LLP in a February 11, 2020 email from Jeffrey Larry of Paliare Roland to Andrew Wood of DL LLP, which email is included in the email chain at Appendix "O" referenced above.

RECOMMENDATIONS

63. The Receiver respectfully recommends that the Court make the order it seeks detailed in paragraph 6 (b) above, as:
 - a. the Receiver has made reasonable and good faith efforts to sell the Real Property;
 - b. a broad marketing of the Real Property was carried out by the Receiver in accordance with the Court-approved Sale Process;
 - c. the APA represents the highest and best offer received by the Receiver for the Real Property; and
 - d. the aggregate consideration for all of the Purchased Assets (plus the funding of the Potential Priority Claims) is materially in excess of any realization that the Receiver could expect to achieve if the assets were marketed and sold separately.

All of which is respectfully submitted, this 30th day of April, 2021.

RSM CANADA LIMITED

in its capacity as the Court-appointed receiver
of the property, assets and undertaking of
Fernwood Development (Ontario) Corporation
and not in its personal capacity



Per:

Arif Dhanani, CPA, CA, CIRP, LIT
Vice-President

APPENDIX A

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.) WEDNESDAY, THE 12th
JUSTICE HAINEY)
) DAY OF FEBRUARY, 2020

B E T W E E N:



MARSHALLZEHR GROUP INC.

Applicant

- and -

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

**ORDER
(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing RSM Canada Limited as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of Fernwood Developments (Ontario) Corporation (the "**Debtor**") acquired for, or

used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Murray Snedden sworn January 30, 2020 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and Pensio Property Management Group Inc., no one appearing for the Debtor, and on reading the consent of RSM Canada Limited to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*, RSM Canada Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that

nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any

applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *BIA*, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this

Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the *BIA*, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal

information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any

gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the *BIA* or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2.5 million (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates

evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

RETENTION OF LAWYERS

25. **THIS COURT ORDERS** that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://www.rsmcanada.com/fernwood-developments-ontario-corporation>.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any

other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

28. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

29. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

32. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

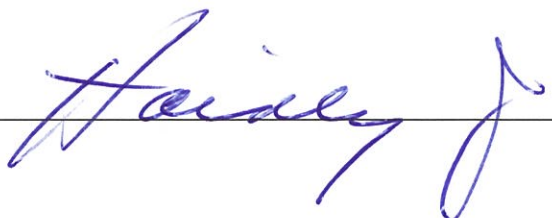
34. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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LE / DANS LE REGISTRE NO:

FEB 12 2020

PER / PAR:

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SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that RSM Canada Limited the receiver (the "**Receiver**") of the assets, undertakings and properties Fernwood Developments (Ontario) Corporation acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 12th day of February, 2020 (the "**Order**") made in an application having Court file number CV-20-00635523-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

RSM CANADA LIMITED, solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

MARSHALLZEHR GROUP INC.
Applicant

-and- FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION
Respondent
Court File No. CV-20-00635523-00CL

ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
PROCEEDING COMMENCED AT
TORONTO

ORDER
(appointing Receiver)

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Toronto, Ontario M2N 7E9

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E-mail: samr@chaitons.com

Lawyers for the Applicant

APPENDIX B

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

-and-

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Respondent

FIRST REPORT OF THE RECEIVER

JUNE 30, 2020

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INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (the “**Court**”) dated February 12, 2020 (the “**Appointment Order**”), RSM Canada Limited (“**RSM**”) was appointed receiver (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Fernwood Developments (Ontario) Corporation (“**Fernwood**” or the “**Debtor**”) acquired for, or used in relation to a business carried on by Fernwood, including all proceeds thereof (the “**Property**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. The Appointment Order authorizes the Receiver to, among other things:
 - (a) take possession and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of, or from, the Property;
 - (b) manage, operate, and carry on the business of Fernwood, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of Fernwood;
 - (c) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver’s powers and duties, including without limitation those conferred by the Appointment Order; and

- (d) receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor.
3. The Appointment Order empowers the Receiver to borrow by way of revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2.5 million (or such greater amount as the Court may order), for the purpose of funding the administration of the receivership and the exercise of the Receiver's powers and duties.
4. The Appointment Order, together with Court documents related to the receivership proceeding, has been posted on the Receiver's website, which can be found at <http://www.rsmcanada.com/fernwood-developments-ontario-corporation>.
5. In accordance with paragraph 25 of the Appointment Order, the Receiver has retained Chaitons LLP ("**Chaitons**") as its legal counsel for this receivership proceeding, except in circumstances where independent legal advice is required by the Receiver. The Receiver's independent legal counsel is Paliare Roland Rothstein Rosenberg LLP ("**Paliare Roland**").

PURPOSE OF THE FIRST REPORT

6. The purpose of this first report of the Receiver (the "**First Report**") is to:

- (a) report to the Court on the activities of the Receiver from February 12, 2020 (the “**Appointment Date**”) to the date hereof, which include, among other things:
- (i) communications with and request for information from Mr. Jordan Zukowski (“**Mr. Zukowski**”), the President and sole Director of Fernwood, and his legal counsel and with respect to certain information regarding a bank account opened by Fernwood with the Toronto-Dominion Bank (“**TD Bank**”), among other things;
 - (ii) the Receiver’s dealings with Fernwood’s property manager, Pensio Property Management Group Inc. and/or Pensio Global (“**Pensio**”), including Pensio’s retention of rent deposits paid by tenants of the Fernwood owned units in the Development (as defined below);
 - (iii) the Receiver’s request for information and documentation from Fernwood’s real estate counsel, Smith Valeriotte LLP (“**SV Law**”);
 - (iv) discussions the Receiver and/or Chaitons has had with Simcoe Standard Condominium Corporation # 240 (the “**Condo. Corp.**”), Condo. Corp.’s property manager, Bayshore Property Management Inc. (“**Bayshore**”), and the Condo. Corp.’s counsel regarding the payment of common area fee arrears and condominium liens registered by the Condo. Corp. against 25 units owned by Fernwood in the Development;

- (b) provide the Court with a summary of the Receiver's cash receipts and disbursements for the period from February 12, 2020 to June 15, 2020 (the "R&D"); and
- (c) request the Court grant an Order or Orders:
 - (i) approving the Receiver's activities as set out in the First Report;
 - (ii) directing Pensio to pay to the Receiver \$30,258.06, which represents all rent deposits retained by Pensio in respect of the Fernwood owned units less the March 2020 property management fee payable to Pensio by the Receiver;
 - (iii) authorizing the Receiver to pay \$76,807 to the Condo Corp in connection with the condominium liens and outstanding common expenses owed since the Appointment Date;
 - (iv) approving the Receiver's proposed Sale Process (as defined below);
 - (v) approving the R&D; and
 - (vi) approving the fees and disbursements of the Receiver and Paliare Roland to May 31, 2020.

TERMS OF REFERENCE

7. In preparing this First Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "**Information**"). Certain of the information contained in the First Report may refer to, or is based

on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

8. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.

BACKGROUND

9. Fernwood is a corporation incorporated under the laws of the Province of Ontario and has its mailing address in Guelph, Ontario. A corporate profile report for Fernwood is attached hereto as **Appendix “B”**.
10. Fernwood is the developer of a 94-unit stacked townhouse phased condominium complex known as Schoolhouse Barrie (formerly known as Georgian Meadows), located in Barrie, Ontario (the “**Development**”). Each of the three phases of the Development consists of two buildings, for a total of six buildings. Phases 1 and 2 are complete and Fernwood has sold all but 26 residential units in these two phases of the Development (collectively, the “**Fernwood Owned Units**”).

11. Phase 3, which consists of 32 residential units, is incomplete and in various stages of construction. The residential units in Phase 3 have yet to be sold by Fernwood and are not subject to agreements of purchase and sale.
12. MarshallZehr Group Inc. (“**MZG**”) provided Fernwood with a loan of \$19.95 million (the “**Loan**”) pursuant to a commitment letter dated September 20, 2016, as amended. The loan was repayable on demand and matured on September 1, 2019.
13. MZG’s security over Fernwood’s property and assets include a charge/mortgage in the principal amount of \$22 million and a general assignment of leases and rent, both of which are registered on title to the Fernwood Owned Units and Phase 3 of the Development, and a general security agreement.
14. On January 21, 2020, MZG demanded repayment of the Loan from the Debtor and sent a Notice of Intention to Enforce Security pursuant to the provisions of the *Bankruptcy and Insolvency Act (Canada)*.
15. Fernwood did not repay the Loan. MZG brought an application with the Court for the appointment of a receiver. On February 12, 2020, the Court issued the Appointment Order in which RSM was appointed as Receiver. Fernwood did not oppose the appointment of the Receiver.

RECEIVER’S ACTIVITIES TO DATE

16. Set out below is a summary of the Receiver’s activities since its appointment, certain of which are discussed in greater detail later in the First Report:

- (a) immediately after its appointment, the Receiver contacted Mr. Zukowski to request a meeting. Mr. Zukowski advised that he was not able to meet with the Receiver until the following week;
- (b) attended at Fernwood's offices in Barrie, Ontario on February 20, 2020 and met with Mr. Zukowski (the "**Initial Meeting**") to discuss the receivership proceeding and to ascertain the location of Fernwood's books and records. Mr. Zukowski provided the Receiver with certain information, including details regarding Fernwood's bank accounts with Bank of Montreal ("**BMO**"). Mr. Zukowski advised the Receiver that the majority of Fernwood's books and records were with Royal City Bookkeeping Services Inc. ("**RCBS**");
- (c) wrote to BMO to request that all bank accounts in the name of Fernwood be frozen and to allow deposits, but no withdrawals from those accounts;
- (d) contacted RCBS to obtain additional information in respect of Fernwood, including the names, addresses and amounts owing to Fernwood's creditors, an aged accounts receivable listing and a balance sheet;
- (e) sent a Notice and Statement of Receiver pursuant to Section 245(1) of the Bankruptcy and Insolvency Act (the "**245 Notice**") to the known creditors of Fernwood via regular mail. The known creditors were compiled from a Personal Property Security Registration System search conducted by the Receiver and from a list of creditors provided by RCBS. A copy of the 245 Notice is attached hereto as **Appendix "C"**;

- (f) arranged for the redirection of mail from two addresses provided by Mr. Zukowski to the Receiver's business address. The mail redirection commenced on February 27, 2020;
- (g) opened an HST account with Canada Revenue Agency;
- (h) opened a trust account at BMO for the receipts and disbursements relating to the receivership administration;
- (i) contacted Pensio, Fernwood's property manager prior to the appointment of the Receiver, in order to ascertain Pensio's role and to request that Pensio assist the Receiver with collection of rents for the Fernwood Owned Units for the month of March 2020;
- (j) terminated Pensio's engagement as property manager and entered into a property management agreement with Subhkin Management Inc. ("**Subhkin**"), an independent property manager, to manage the Fernwood Owned Units and Phase 3 of the Development;
- (k) contacted the City of Barrie, Alectra Utilities and Rogers to open new accounts in the name of the Receiver in order that service to the Development was not interrupted; and
- (l) obtained a copy of Fernwood's insurance documents to review the current insurance coverage for the Development. The Receiver contacted Fernwood's insurer, Federated Insurance, and has been added as an

additional named insured and loss payee on Fernwood's insurance policies.

The current policy term expires on January 15, 2021.

BANK ACCOUNT AT TORONTO DOMINION BANK ("TD Bank")

17. On February 26, 2020, RCBS confirmed that Fernwood had two bank accounts with BMO and one account at TD Bank, bearing account # 5254264 (the "**TD Bank Account**"). RCBS further advised that it did not have any details for the TD Bank Account and that it would request bank statements from the TD Bank.
18. The existence of the TD Bank Account was not previously disclosed to the Receiver by Mr. Zukowski.
19. On February 26, 2020, the Receiver wrote to TD Bank to request that TD Bank freeze the TD Bank Account and any other accounts with TD Bank in the name of Fernwood. On February 27, 2020, TD Bank confirmed that the TD Bank Account was frozen. The TD Bank Account is discussed in more detail below.
20. On February 28, 2020, TD Bank provided the Receiver with a printout setting out the transactions relating to the TD Bank Account (the "**TD Statement**"), which account was opened on October 28, 2019. As at January 21, 2020, the TD Bank Account had an overdraft balance of \$22.01.
21. The Receiver reviewed the TD Statement and notes that:
 - (a) on October 28, 2019, there was a deposit of \$531,363.09 (the "**Deposit**") to the TD Bank Account; and

- (b) on October 31, 2019 and November 5, 2019, amounts of \$250,000 and \$225,000, respectively, were transferred (the “**Transfers**”) from the TD Bank Account to bank account bearing account number 6464509 (the “**646 Account**”), which account is also with TD Bank.
22. On March 2, 2020, the Receiver wrote to RCBS requesting information on how the Deposit and Transfers were recorded in Fernwood’s general ledger. RCBS advised the Receiver that the accounting for these transactions had not yet been completed.
23. On March 3, 2020, the Receiver wrote to RCBS to request further information from the books and records of Fernwood and to follow up on the TD Bank Account transactions. RCBS responded that it had not had the opportunity to gather the information and that the information would be provided to the Receiver shortly.
24. On March 4, 2020, RCBS informed the Receiver that RCBS was unwilling to provide the Receiver with any further information until its outstanding accounts with Fernwood were paid.
25. On March 6, 2020, the Receiver wrote to RCBS to advise that RCBS’ position in respect of non-provision of the information requested by the Receiver pending payment of its unpaid account was in breach of the Appointment Order and that the Receiver would seek an order for contempt and costs, if RCBS continued to withhold information in respect of Fernwood.

26. On March 9, 2020, RCBS responded to the Receiver that RCBS would review the Receiver's correspondence and get back to the Receiver.
27. After an exchange of correspondence between counsel for RCBS and the Receiver, on March 13, 2020, RCBS, through its counsel, agreed to provide the requested information by April 10, 2020.
28. On March 16, 2020, the Receiver wrote to Mr. Zukowski requesting further details of Fernwood's assets (the "**March 16th Letter**"), including the TD Bank Account. On March 18, 2020, Duncan, Linton LLP, counsel to Mr. Zukowski ("**Duncan, Linton**") wrote to the Receiver (the "**March 18th Letter**") to advise that, among other things, Mr. Zukowski was compiling a package of information relating to the TD Bank Account. Copies of the March 16th Letter and the March 18th Letter are attached hereto as **Appendices "D" and "E"**, respectively.
29. As both RCBS and Mr. Zukowski advised the Receiver that they required additional time to provide the Receiver with the information requested by the Receiver, including information on the TD Bank Account, the Receiver wrote to TD Bank on March 18, 2020 to request transaction details in respect of the Deposit and Transfers.
30. On March 19, 2020, TD Bank provided the Receiver with details on the Deposit and Transfers, as follows:
 - (a) TD Bank provided a copy of a cheque in the amount of \$531,363.09 from Tarion Warranty Corporation ("**Tarion**") payable to Fernwood (the "**Tarion**")

Cheque”), which cheque represents the Deposit. A copy of the Tarion Cheque is attached hereto as Appendix “**F**”; and

- (b) the 646 Account to which the Transfers were made is a joint personal account in the names of Mr. Zukowski and Rudi Zukowski, who the Receiver understands is Mr. Zukowski’s father.
31. The Receiver communicated with Tarion regarding the Tarion Cheque and was advised by Tarion that the Tarion Cheque represented a release of a portion of Tarion’s security over the Development, which security was previously provided to Tarion by Fernwood.
32. On March 23, 2020, Paliare Roland wrote to Duncan, Linton (the “**March 23rd Letter**”) to follow up on various outstanding information, including information about the TD Bank Account. A copy of the March 23rd Letter is attached hereto as **Appendix “G”**.
33. On March 26, 2020, the Receiver contacted TD Bank to see if TD Bank could provide the Receiver with details regarding the 646 Account. On March 27, 2020, TD Bank informed the Receiver that it could not provide details of the 646 Account without an order of the Court directing it to do so.
34. On March 27, 2020, Duncan, Linton wrote to Paliare Roland (the “**March 27th Letter**”) to advise, among other things, that all information in Mr. Zukowski’s possession concerning the TD Bank Account would be sent to the Receiver the

following week. A copy of the March 27th Letter is attached hereto as **Appendix “H”**.

35. On March 30, 2020, Paliare Roland wrote to Duncan, Linton to request that a response to the Receiver’s information request in respect of the TD Bank Account be provided by noon on April 1, 2020, as the Receiver had initially requested the information from Mr. Zukowski on March 16, 2020.
36. On April 1, 2020, Duncan, Linton provided Paliare Roland with a reconciliation (the **“Reconciliation”**) of the TD Bank Account, which is summarized below:

Receipts

Tarion deposit \$531,363.09

Disbursements

Utilities, insurance, accounting, bookkeeping and other Development Expenses	\$109,258.21
Corporate Mastercard	41,969.24
Smith Valeriote LLP (SV Law)	7,507.50
Duncan Linton LLP (Zukowski Counsel)	21,853.10
Schneider Ruggiero LLP	21,961.98
Employee wages and expenses	41,836.31
Expenses - Jordan Zukowski	63,926.06
Management fees - Jordan Zukowski	230,000.00
Management fees - Rudi Zukowski	158,200.00
Bank charges	<u>44.01</u>
Total expenses per reconciliation	<u>\$696,556.41</u>

Owed to Jordan Zukowski (\$165,193.32)

37. On April 6, 2020, Paliare Roland wrote to Duncan, Linton (the **“April 6th Letter”**) to ask whether the management fees claimed by Mr. Zukowski and his father were accrued in Fernwood’s financial statements and to request receipts for the expenses claimed by Mr. Zukowski. On April 23, 2020 (the **“April 23rd Response**

Letter”), Duncan, Linton responded that the management fees were not accrued in Fernwood’s financial statements, but they were budgeted for. Duncan, Linton advised that receipts for Mr. Zukowski’s expenses would be provided once received from RCBS. To date, no expense receipts have been provided to the Receiver. Copies of the April 6th Letter and April 23rd Response Letter are attached hereto as Appendices “**I**” and “**J**”, respectively.

38. The Reconciliation does not reflect all the entries that concludes with the TD Bank Account overdraft balance of \$22.01 set out on the TD Statement, as the Reconciliation appears to reflect only certain of the transactions set out in the TD Statement.
39. The TD Statement sets out that on various dates, business expenses and bank charges totaling \$202,601.54 were paid from the TD Bank Account. The Receiver also notes that funds were transferred back to the TD Bank Account from the 646 Account in order to pay certain expenses. Based on the Receiver’s review, it appears that a net amount of \$328,761.55 was transferred to the 646 Account in favour of Mr. Zukowski and his father, Rudi.

PENSIO

40. As set out above, on the date of the Receiver’s appointment, Pensio was the property manager of the Development.
41. On February 18, 2020, Chaitons contacted Pensio’s counsel, Friedman Law Professional Corporation (“**Friedmans**”), to request from Pensio a breakdown and reconciliation detailing all rent that has been paid for each of the regarding the

Fernwood Owned Units to date. In addition, Chaitons advised Friedmans that all rents paid by tenants of the Fernwood Owned Units were to be sent to the Receiver, without deduction, in accordance with the Appointment Order.

42. On February 19, 2020, Friedmans provided to Chaitons, among other things, a rent roll for February 2020 and a reconciliation (the “**Pensio Reconciliation**”) based on information that was sent to Friedmans by Pensio. Friedmans requested that the Receiver directly contact Mr. Brandon Keks (“**Mr. Keks**”), Chief Operating Officer of Pensio, for any further information. According to the Pensio Reconciliation, after a series of advances made by Pensio to Fernwood, the net amount claimed by Pensio to be owed to it by Fernwood as at the date of the Receiver’s appointment is \$490,467. A copy of the Pensio Reconciliation is attached hereto as **Appendix “K”**.

43. On February 21, 2020, the Receiver discussed the Pensio Reconciliation with Mr. Keks. Based on that discussion, the Receiver understands the following:
 - (a) Pensio and/or its related companies, including Nationwide Rentsure Canada Corp. and Ai Guarantee Inc., entered into an agreement with Fernwood to provide a rental guarantee program (the “**Rental Guarantee Program**”) in order for Fernwood to be able to sell Development units at a premium, as well as property management services to Fernwood and other unit owners. The Rental Guarantee Program provided unit owners with a form of insurance such that the difference between rent collected on a particular unit and \$2,500 would be paid by Pensio to the unit owner.

Property management services were provided at a rate of 6% of rent collected by Pensio;

- (b) Mr. Keks claims that Fernwood owes Pensio approximately \$2.3 million, including HST, for fees related to the Rental Guarantee Program plus an additional \$1.0 million fee for assistance with settling a potential lawsuit for breach of contract and non-payment of real estate commissions between Keller Williams Realty, the initial real estate broker engaged by Fernwood, and Fernwood. Mr. Keks indicated that the fees of \$2.3 million in respect of the Rental Guarantee Program were payable to Pensio in advance of the sale of any of the units in the Development. Based on the Pensio Reconciliation, it appears that Fernwood paid Pensio \$1.4 million, resulting in the balance of \$1.9 million being unpaid and outstanding; and
- (c) as Fernwood did not pay the full amount claimed by Pensio, commencing in June 2017, Pensio started retaining rents collected and applying the amounts collected against its outstanding fees. As the Receiver understood that Fernwood provided a general assignment of leases and rents in favour of MZG, the Receiver requested that Mr. Keks provide the Receiver with documentation evidencing MZG's consent to Pensio retaining the rents collected and offsetting them against its outstanding fees. Mr. Keks advised that while there was no formal signed agreement, MZG agreed to this practice. Pensio provided an email exchange between Murray Snedden of MZG and John Hamilton of Pensio between February 25 and 28, 2019. A copy of the email exchange is attached hereto as **Appendix "L"**.

44. The Receiver advised Mr. Keks that the Receiver would not be paying Pensio's claim of \$490,467, but that it may be willing to continue with Pensio as property manager of the Fernwood Owned Units. In addition, the Receiver further advised Mr. Keks that there may be some additional role in the receivership administration for Pensio, including providing assistance to the Receiver to sell the Fernwood Owned Units, depending on the circumstances.
45. During March 2020, the Receiver obtained further information from various sources regarding Pensio and its relationship with Fernwood and MZG. On the basis that there appeared to be various disagreements and issues amongst the parties, the Receiver concluded that the appointment of an independent property manager was appropriate.
46. On March 25, 2020, the Receiver advised Pensio that, effective from April 1, 2020, the Receiver engaged Subhkin to act as the property manager over the Fernwood Owned Units. During the period March 25, 2020 to March 31, 2020, Subhkin transitioned property management duties from Pensio.
47. On April 1, 2020, the Receiver emailed Pensio to request that tenant rent deposits for March 2020 (the "**Rent Deposits**") be paid to the Receiver. The Receiver's understanding, based on the leases reviewed by Subhkin, was that the Rent Deposits in the possession of Pensio totaled approximately \$55,000. Mr. Keks advised the Receiver that Pensio was completing a reconciled accounting for all the investor owners in the Development in addition to the Fernwood Owned Units.

After the Receiver's follow up emails, Mr. Keks advised the Receiver on April 7, 2020 that a reconciliation would be provided to the Receiver on April 8, 2020.

48. On April 6, 2020, it came to the Receiver's attention that on April 3, 2020 Pensio sent an email to the tenants of the Fernwood Owned Units requesting that they pay their April 2020 rent to Pensio. The Receiver contacted Mr. Keks on this matter and requested that Pensio remit all rents collected for April 2020 to the Receiver. Mr. Keks advised that he was not aware of the request to tenants and that an automated message was likely sent out from Pensio's property management system. Mr. Keks subsequently advised the Receiver that any rents collected for April 2020 by Pensio had been returned to the applicable tenant(s). Subhkin has subsequently contacted all tenants in Fernwood Owned Units to collect rent for April 2020, as appropriate.
49. In March 2020, Pensio collected rent in respect of the Fernwood Owned Units totaling \$48,480 and remitted same to the Receiver. The Receiver's arrangement with Pensio was to pay 6% of rent collected by Pensio as a property management fee. Mr. Keks, on several occasions, has pressed the Receiver to pay its property management fee totaling \$3,286.94, including HST. The Receiver responded that it would not pay the fee as Pensio had not remitted the Deposits to the Receiver.
50. On April 14, 2020, the Receiver followed up with Mr. Keks to confirm that it had not received any reconciliation, nor had any of the rent deposits held by Pensio been sent to the Receiver.

51. On April 15, 2020, Mr. Keks wrote to the Receiver (the “**April 15th Email**”) and provided a reconciliation of the rent deposits held by Pensio, which totaled \$33,545, and advised that Pensio would be setting off the Rent Deposits against the unsecured amount owed to Pensio by Fernwood. A copy of the April 15th Email is attached hereto as **Appendix “M”**.
52. On April 28, 2020, Paliare Roland wrote to Pensio (the “**April 28th Letter**”) to advise that: (i) Pensio had no right to offset the Rent Deposits it received on behalf of Fernwood on the basis that the Rent Deposits were held by Pensio in trust for Fernwood; and (ii) the Appointment Order precluded set-off as all rights and remedies against Fernwood’s Property are stayed and suspended. The April 28th Letter requested that Pensio remit to the Receiver the amount of the Rent Deposits, net of the March 2020 property management fee of \$3,286.94 owed by the Receiver to Pensio. A copy of the April 28th Letter is attached hereto as **Appendix “N”**.
53. As no response to the April 28th Letter was received, Paliare Roland sent an email to Mr. Keks on May 13, 2020 to request a response to the April 28th Letter and copied Friedmans. Mr. Keks responded to advise that a complete response would be provided to Paliare Roland that week.
54. On May 25, 2020 (the “**May 25th Email**”), Mr. Keks wrote to the Receiver to advise that Pensio would pay \$29,383.06 to the Receiver. The May 25th Email indicates that rent deposits of \$33,595 were held by Pensio and that in addition to the amount of the property management fees owed to it by the Receiver, Pensio was

deducting \$925 for “offset default rent” for two tenants that had not paid rent, which resulted in forfeiture of their deposits. The Receiver does not agree with Pensio that the last month’s rent claimed to be “offset default rent” totaling \$925 can be offset against Pensio’s program fees. A copy of the May 25th Email is attached hereto as Appendix “O”.

55. To date, no amount has been paid by Pensio to the Receiver in respect of the Rent Deposits. The Receiver is therefore seeking an Order requiring Pensio to pay to the Receiver \$30,318.06, which represents the Rent Deposits retained by Pensio (as per the May 25th Email) in respect of the Fernwood Owned Units less the March 2020 property management fee payable to Pensio by the Receiver.

SV LAW

56. As set out previously in this report, Mr. Zukowski advised the Receiver that the majority of Fernwood’s books and records were with RCBS. Following the Receiver’s appointment, the Receiver sought information from RCBS in respect of the 36 units in the Development sold by Fernwood to third parties (the “**Third-Party Units**”). In order to confirm that the proceeds of sale of the Third Party Units were sent to the appropriate parties, the Receiver requested copies of the agreements of purchase and sale for the Third-Party Units, the trust ledgers for same and details of where the proceeds of sale for those units were directed.
57. RCBS advised the Receiver that RCBS did not have copies of the agreements of purchase and sale; however, it had copies of certain of the closing statements of adjustments and trust ledgers, but that it did not have all of the information. The

Receiver then contacted SV Law, the law firm which represented Fernwood on the sale of the Third-Party Units, to obtain the subject documents.

58. On March 10, 2020, the Receiver wrote to SV Law seeking information and documentation in respect of the sale of the Third-Party Units and details of the security provided to Tarion. On March 18, 2020, the Receiver sent a further email to SV Law to follow up on the request sent on March 10, 2020.
59. On March 18, 2020, SV Law responded that the Fernwood file and any information the Receiver was seeking was subject to solicitor-client privilege, that SV Law was not in a position to waive that privilege, and that Fernwood was not waiving the privilege.
60. On the basis that the Receiver was unable to obtain the information it sought from RCBS and SV Law, it requested that MZG provide the information, if it was in possession of it. MZG was able to provide certain of the information sought by the Receiver; however, MZG was unable to provide the Receiver with complete information concerning the sale of all Third-Party Units.
61. As set out above, the Receiver requires the information and documentation so that it can confirm that the proceeds of sale of the Third-Party Units were sent to the appropriate parties. The Receiver has attempted to obtain such documentation from all possible sources and has been unable to obtain to date complete information relating to the sale of units to third parties or documentation in respect of Tarion.

62. On June 16, 2020, Chaitons wrote to SV Law (the “**SV Law Email**”) to advise that the Receiver required certain information that it was unable to obtain from other sources. On that same day, Chaitons wrote to Duncan Linton (the “**June 16th Email**”), with a copy of the correspondence to SV Law, to ask if Fernwood or the Zukowskis had any issue with SV Law providing the Receiver with the requested information and documents. Copies of the SV Law Email and June 16th Email are attached hereto as Appendices “**P**” and “**Q**”, **respectively**.
63. On June 23, 2020, Mr. Duncan, on behalf of Fernwood, confirmed in writing that Fernwood did not object to SV Law producing the requested documentation and information sought by the Receiver with respect to the sale of the Third Party Units. A copy of Mr. Duncan’s letter is attached hereto as Appendix “**R**”.
64. The Receiver is currently in discussions with SV Law and its independent counsel regarding the timing of the production of the requested documents, as SV Law’s files were in off-site storage and the requested documents need to be scanned.

CONDO. CORP.

Liens

65. As at the date of the Receiver’s appointment, the main accounts for water, hydro and internet were in the name of Fernwood, notwithstanding that the condominium declaration for the Development was registered in 2016, which resulted in the incorporation of the Condo. Corp., and the Condo. Corp. had retained Bayshore to be its property manager.

66. On February 14, 2020, Bayshore wrote to Fernwood, BMO and MZG to advise that it intended to register liens against the Fernwood Owned Units for non-payment of common area fees for the months of December 2019, January 2020 and February 2020, if unpaid common area expenses of \$999 per unit were not paid by February 24, 2020. Bayshore also advised that it \$1,000 per unit would be added to the Condo. Corp.'s lien, representing costs and reasonable expenses to be incurred by the Condo. Corp. in connection with the collection or attempted collection of the \$999 per unit, as well as the cost of the title search and notice of lien (the "**Lien Costs**").
67. In reviewing this matter, it appears that Fernwood had not paid any common area fees to the Condo. Corp. for a significant period of time. Based on the account statements provided by Bayshore, the Receiver understands that MZG directly paid \$1,830 per unit to the Condo. Corp. in March 2019, which appears to be the accrued balance of common area fees from April 1, 2018 to November 30, 2018.
68. On February 19, 2019, Chaitons contacted Bayshore's paralegal to seek an extension to Bayshore's February 24, 2020 deadline to pay the outstanding amount of \$999 per unit as the Receiver was in the process of obtaining an advance from MZG to fund costs of the receivership. On February 19, 2020, Bayshore responded to Chaitons to advise that the Condo. Corp.'s board of directors had provided instructions to proceed with lien registrations on February 28, 2020, if the \$999 for each of 25 of the Fernwood Owned Units was not paid.

69. On February 28, 2020, Chaitons responded to Bayshore to advise that the Receiver had sufficient funds to make payment of the \$999 for each unit in respect of common area fees for the months of December, January and February and requested confirmation that no lien had been registered against the units. Bayshore responded that a lien in the amount of \$1,999 had been registered by the Condo. Corp.'s counsel over 25 of the Fernwood Owned Units.

Following a significant number of discussions between counsel to the Receiver and counsel to the Condo. Corp., the Receiver and the Condo. Corp. have agreed to a settlement such that the Receiver is seeking Court authority to pay \$76,807 to the Condo. Corp. in full and final satisfaction of all amounts owed by Fernwood in connection with the condominium liens registered by the Condo. Corp. against Fernwood Owned Units, together with unpaid condominium fees for the months of March to June 2020. The Receiver has obtained a release from the Condo. Corp. that will become effective upon Court approval of the payment of \$76,807 to the Condo. Corp.

Utilities

70. As referred to earlier herein, the accounts for water, hydro and internet for the Development were still in the name of Fernwood as at the date of the Receiver's appointment.

71. In order to ensure no services were interrupted, the Receiver contacted the City of Barrie, Alectra Utilities and Rogers to advise of the receivership and to have accounts opened in the Receiver's name.

72. As the Receiver was receiving limited cooperation from Bayshore and Ness Law, Chaitons requested from Bayshore's paralegal the contact information for the Condo. Corp.'s board members in order that the Receiver could have a direct discussion with them regarding the Development, including the status of claimed common area deficiencies and utilities.
73. On April 8, 2020, Bayshore's paralegal advised that Chaitons' email had been forwarded to Bayshore's general manager of condominium operations (the "**General Manager**"), who would be able to answer the Receiver's questions regarding the Condo. Corp. No communication was received from the General Manager and on April 14, 2020, Chaitons followed up again with Bayshore's paralegal, who provided the General Manager's email address and phone number.
74. A call with two board members of the Condo. Corp. (the "**Board Members**"), the General Manager, Chaitons and the Receiver was arranged for April 17, 2020. During that call, the General Manager advised the Receiver that the costs for hydro, water and internet were the responsibility of each unit owner. The Receiver informed the General Manager that while the main water and hydro accounts were in the name of Fernwood, the individual units were being sub-metered by Priority Submetering Solutions ("**Priority**").
75. The Receiver discussed the utility accounts with the General Manager and the Board Members and requested their assistance to have the accounts changed over to the name of the Condo. Corp. The General Manager requested that the Receiver send to it and the Board Members copies of the agreements between

Fernwood and Rogers regarding internet services (the “**Rogers Agreement**”), and Fernwood and Priority (the “**Priority Agreement**”). The Receiver forwarded copies of the Rogers Agreement and Priority Agreement on April 17, 2020 and April 20, 2020, respectively.

76. The Receiver requested of the General Manager that it provide a copy of the common area deficiency listing submitted by the Condo. Corp. to Tarion and drawings of the Development. To date, this information has not been provided to the Receiver by the General Manager.

77. Based on calls with Priority, Alectra, the City of Barrie and Rogers, the Receiver understands that no one from Bayshore or the Condo. Corp. has contacted them. The Receiver set up calls with the various utility suppliers to apprise them of the current situation and to provide them with the General Manager’s contact information. Since the time of the Receiver’s calls with the various utility suppliers, the Receiver has followed up with them and understands the following:
 - (a) Rogers contacted Bayshore and is in the process of having the internet services agreement between Fernwood and Rogers transferred to the Condo. Corp.;

 - (b) The City of Barrie called and left a message or messages for the General Manager; however, the General Manager did not respond to the City of Barrie. As a result, the City of Barrie has unilaterally changed the main account for water into the Condo. Corp.’s name;

- (c) Alectra's position is that Bayshore needs to call their customer service number to have the account changed over to the Condo. Corp.'s name. Since Bayshore and/or the General Manager appear to be unwilling to do this, the Receiver has discussed billing for hydro with Priority and is arranging for reimbursement of charges paid by the Receiver for hydro consumed by Third-Party Units through Priority.

PROPOSED SALE PROCESS FOR THE PROPERTY

78. As noted above, Fernwood is the owner of the 26 completed units in the Development referred to herein as the Fernwood Owned Units, along with 32 incomplete residential units in Phase 3 of the Development, which are in various stages of construction.
79. The Appointment Order authorizes the Receiver to market and sell the Property. The Receiver, in consultation with MZG as the senior secured creditor, proposes the following process to market the Fernwood Owned Units and the incomplete Phase 3 residential units for sale (the "**Sale Process**"):
- (a) Within five (days) following Court approval, the Receiver will contact parties it has identified as potentially interested in purchasing the property and provide a copy of the marketing brochure attached hereto as Appendix "**S**".
- (b) Within seven (7) business days of Court approval, the Receiver will publish a notice substantially in the form attached hereto as Appendix "**T**" advertising the opportunity the opportunity in National Post and/or such

trade or other publications that the Receiver may deem appropriate or advisable, and post the opportunity on its website.

- (c) The Receiver will obtain a non-disclosure agreement from interested parties that wish to receive a confidential information memorandum and access the data room established for the opportunity.
- (d) The offer deadline for prospective purchasers will be 12:00 noon, Toronto time on July 30, 2020, subject to the Receiver, in its discretion, extending the date.

80. Additional aspects of the Sale Process include:

- (a) the Property will be marketed on an “as is where is” basis;
- (b) MZG will have the ability to submit a credit bid offer to the Receiver;
- (c) the Receiver will have the right to reject any and all offers, including the highest offer; and
- (d) any transaction will be subject to Court approval.

RECEIVER’S STATEMENT OF RECEIPTS AND DISBURSEMENTS

81. The Receiver’s interim statement of receipts and disbursements for the period February 12, 2020 to June 15, 2020 is attached hereto as **Appendix “U”**. During this period, total receipts were \$661,409, while total disbursements were \$68,765, resulting in a cash surplus of \$592,644.

82. Included in the receipts is \$545,000 representing the Receiver's borrowings of \$575,000 from MZG net of an interest reserve of \$30,000 held back by MZG to service interest costs during the term of the borrowing. In addition, the Receiver collected \$111,408 of rent from unit and parking tenants.
83. Included in disbursements is \$21,020 paid for insurance premiums, \$20,392 paid to Paliare Roland in respect of legal fees, \$8,346 paid in respect of HST and PST and \$6,228 for repairs and maintenance.

FEES AND DISBURSEMENTS OF THE RECEIVER AND COUNSEL

84. Pursuant to paragraph 18 of the Appointment Order, the Receiver and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Appointment Order. Pursuant to paragraph 19 of the Appointment Order, the Receiver and its counsel shall pass their accounts before the Court.
85. The fees and disbursements of the Receiver for the period February 6, 2020 to May 31, 2020 were \$98,704.50, plus disbursements of \$221.61, plus HST of \$12,860.39, for a total of \$111,786.50. The time spent by the Receiver is more particularly described in the Affidavit of Arif Dhanani sworn June 30, 2020, which is attached hereto and marked as **Appendix "V"** and contains a copy of the invoices that set out the services provided during this period.
86. The fees of the Receiver's independent counsel, Paliare Roland, for the period March 3, 2020 to May 31, 2020 were \$20,615.50, plus disbursements of 2,221.60 plus HST of \$2,960.01, for a total of \$25,797.11. The time spent by Paliare Roland

is more particularly described in the Affidavit of Sarita Sanasie, sworn June 30, 2020, which is attached hereto as **Appendix “W”** and contains a copy of the invoices that set out the services provided during this period.

87. The Receiver is of the view that the fees and disbursements charged by Paliare Roland are fair and reasonable.

REQUESTS OF THE COURT

88. Based on the foregoing, the Receiver respectfully requests that the Court grant the orders described in paragraph 6(c) above.

All of which is respectfully submitted to this Court as of this 30th day of June, 2020.

RSM CANADA LIMITED

In its capacity as Court-appointed Receiver of
Fernwood Developments (Ontario) Corporation
and not in its personal capacity

Per: 

Arif Dhanani, CPA, CA, CIRP, LIT
Vice-President

APPENDIX C

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MADAM

)

TUESDAY, THE 7th

JUSTICE DIETRICH

)

DAY OF JULY, 2020

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

ORDER

THIS MOTION, made by RSM Canada Limited, in its capacity as Court-appointed receiver (the “**Receiver**”) of the property, assets and undertakings of the Respondent, was heard this day virtually via Zoom videoconference as a result of the COVID-19 crisis.

ON READING the Notice of Motion and the First Report of the Receiver dated June 30, 2020 (the “**First Report**”) and the appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel in attendance on the videoconference,

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion and Motion Record is hereby abridged and validated, and the manner of service of the Notice of Motion and Motion Record is hereby validated, so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the First Report, and the conduct and activities of the Receiver described therein, be and are hereby is approved.

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to pay the sum of \$76,807 to Simcoe Standard Condominium Corporation No. 420 in connection with the condominium liens and outstanding common expenses owed for the Fernwood Owned Units (as defined in the First Report) since December 1, 2019.


4. **THIS COURT ORDERS** that the sale process described in the First Report (the "**Sale Process**"), be and is hereby approved. The Receiver is authorized to perform its obligations under and in accordance with the Sale Process and to take such further steps as it considers necessary or desirable in carrying out the Sale Process.

5. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements for the period from February 12, 2020 to June 15, 2020 attached as Appendix "U" to the First Report be and is hereby approved.

6. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its independent counsel, Paliare Roland Rothstein Rosenberg LLP, as described in the First Report, the Fee Affidavit of Arif Dhanani sworn June 30, 2020 attached as Appendix "V" thereto and the

Fee Affidavit of Sarita Sanasie sworn June 30, 2020 attached as Appendix "W" thereto, be and is hereby approved.

7. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be, when the Court returns to regular operations.

 _____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

ORDER

CHAITONS LLP

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Lawyers for RSM Canada Limited
Court-appointed Receiver

APPENDIX D

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File 97627

February 24, 2021

VIA EMAIL

Arif Dhanani
Vice-President
RSM Canada Limited
11 King St. W., Suite 700, Box 27,
Toronto, Ontario, Canada, M5H 4C7

Dear Mr. Dhanani:

Re: Fernwood Developments (Ontario) Corporation (the "Debtor")

You have asked us in your capacity as court-appointed receiver and manager of the property, assets, and undertakings of the Debtor, to review certain loan, security and related documentation relating to the Debtor's indebtedness to MarshallZehr Group Inc. ("MZ") and, in particular, MZ's security over certain undeveloped and unsold portions of the property located at 85 Sydenham Wells, Barrie, Ontario, having the legal description set out in Schedule "E" (the "**Property**") and the Debtor's personal property, including the Debtor's inventory, equipment, and accounts.

SCOPE OF REVIEW

The scope of our review is limited to a) those security and related documents listed in Schedule "A" hereto and b) the Search Results (defined below) (collectively, the "**Documents**"). The only searches and inquiries conducted by us are those referred to in this letter, the results of which are summarized in Schedule "D" attached hereto (the "**Search Results**").

We reviewed the Documents generally to identify any aspect of the Documents or any registrations which did not appear complete and regular on their face, or which appeared to raise material issues. We have also listed in Schedule "A" attached hereto documents that were not reviewed even though they are referenced in the Documents.

This report is limited to the laws of the Province of Ontario and the federal laws of Canada applicable therein. We express no opinion with respect to the validity of Documents to the extent such validity is governed by the laws of any other Jurisdiction.

ASSUMPTIONS AND QUALIFICATIONS

Our opinion as to the validity of the Documents is subject to the assumptions and qualifications set out in Schedules "B" and "C", respectively, attached hereto.

SEARCH RESULTS

Corporate History

Our corporate search conducted on March 11, 2020 reveals that the Debtor was incorporated on January 25, 2011 pursuant to the laws of the Province of Ontario.

Personal Property Searches

We conducted searches against the Debtor as noted in Schedule "D" under the following statutes:

1. *Bankruptcy and Insolvency Act* (Canada);
2. Section 427 of the *Bank Act* (Canada);
3. *Executions Act* (Ontario); and
4. *Personal Property Security Act* (Ontario) (the "**PPSA**").

The results of our searches are summarized in Schedule "D". The Province of Ontario does not have a system for registering title to personal property and, accordingly, we cannot confirm whether the Debtor holds title to any of the personal property referred to herein.

Real Property Searches

On March 12, 2020, we conducted a search of title to the Property, e.g. the Undeveloped Property and Unsold Units (as defined below). The following is a summary of the results of the search and is not a full investigation of title to the Property. Given the limited nature of a search we do not express any opinion as to title to the Property.

The parcel registers for the Property which we obtained as part of our search shows the following registrations:

PIN No. 58831-1862 (the "Undeveloped Property")

1. Plan of Subdivision registered on February 17, 2012 as instrument No. 5IM983;

2. Notice of Subdivision Agreement between the Corporation of the City of Barrie and 2293420 Ontario Inc. registered on March 6, 2012 as instrument No. SC966830.
3. Transfer from the Corporation of the City of Barrie to 2293420 Ontario Inc. in the amount of 4,000,000 registered on December 19, 2013 as instrument No. SC1107323
4. Charge/Mortgage granted by the Debtor in favour of MZ, in the amount of \$15,000,000.00, registered on December 19, 2013 as instrument No. SC1107324 (the "**MZ Mortgage**");
5. Notice of Assignment of Rent General granted by the Debtor in favour of MZ, registered on December 19, 2013 as instrument No. SC1107325;
6. Notice regarding a Development Agreement from the Corporation of the City of Barrie registered on May 12, 2014 as instrument No. SC1129838;
7. Postponement by MZ of the MZ Mortgage in favour of the Corporation of the City of Barrie registered on May 12, 2014 as instrument No. SC1129839;
8. Transfer Easement granted by the Debtor in favour of Enbridge Gas registered on January 26, 2015 as instrument No. SC1189600;
9. Postponement by MZ of the MZ Mortgage in favour of Enbridge Gas registered on January 26, 2015 as instrument No. SC1189601;
10. Condominium Declaration from the Debtor registered on October 24, 2016 as instrument No. SC1354411;
11. Notice regarding the MZ Mortgage from the Debtor to MZ registered on December 15, 2016 as instrument No. SC1372009;
12. Notice regarding the MZ Mortgage from the Debtor to MZ registered on October 1, 2018 as instrument No. SC1544840;
13. Construction Lien by Jeffrey McKeever in the amount of \$173,489 registered on February 13, 2020 as instrument No. SC1661911;
14. Construction Lien by 1267989 Ontario Inc. in the amount of \$178,195 registered on March 5, 2020 as instrument No. SC1666408; and
15. Construction Lien by Mack Construction Inc. in the amount of \$28,740 registered on March 6, 2020 as instrument No. SC1666613 (collectively, items 13-15 are the "**Construction Liens**").

PIN Nos. 59420-0001, 59420-0010, 59420-0011, 59420-0014, 59420-0022, 59420-0025, 59420-0030, 59420-0031, 59420-0065, 59420-0066, 59420-0068, 59420-0069, 59420-0071, 59420-0072, 59420-0073, 59420-0077, 59420-0078, 59420-0081, 59420-0087, 59420-0088, 59420-0089, 59420-0090, 59420-0091, 59420-0092, 59420-0093, 59420-0094 (LT) (the “Unsold Units”)

1. Notice of Subdivision Agreement between the Corporation of the City of Barrie and 2293420 Ontario Inc. registered on March 6, 2012 as instrument No. SC966830.
2. The MZ Mortgage;
3. Notice of Assignment of Rent General in favour of MZ, registered on December 19, 2013 as instrument No. SC1107325;
4. Notice regarding a Development Agreement from the Corporation of the City of Barrie registered on May 12, 2014 as instrument No. SC1129838;
5. Postponement by MZ of the MZ Mortgage in favour of the Corporation of the City of Barrie registered on May 12, 2014 as instrument No. SC1129839;
6. Transfer Easement granted by the Debtor in favour of Enbridge Gas registered on January 26, 2015 as instrument No. SC1189600;
7. Postponement by MZ of the MZ Mortgage in favour of Enbridge Gas registered on January 26, 2015 as instrument No. SC1189601;
8. Notice from Simcoe Standard Condominium Corporation No. 420 registered on November 8, 2016 as instrument No. SC1359888;
9. Notice regarding the MZ Mortgage from the Debtor to MZ registered on December 15, 2016 as instrument No. SC1372009;
10. Condo Amendment to Declaration to create a phase from the Debtor to MZ registered on March 9, 2018 as instrument No. SC1496430;
11. Notice regarding the MZ Mortgage from the Debtor to MZ registered on October 1, 2018 as instrument No. SC1544840;
12. Condo Liens in the amount of \$1,999 from Simcoe Condominium Plan no. 420 registered on February 28, 2020 as various instruments on each unit; and,
13. Notices from the Simcoe Standard Condominium Corporation No. 420 registered on March 26, 2018 as instrument No. SC1499656 on certain of the units.

On February 9, 2021, we conducted a search of title to the unsold parking units. The following is a summary of the results of the search and is not a full investigation of title to the Property. Given the limited nature of a search we do not express any opinion as to title to the Property.

The parcel registers for the Property which we obtained as part of our search shows the following registrations:

Regarding PIN Nos. 59420-0033, 59420-0042, 59420-0043, 59420-0046, 59420-0054, 59420-0057, 59420-0062, 59420-0063 (LT):

14. Notice of Subdivision Agreement between the Corporation of the City of Barrie and 2293420 Ontario Inc. registered on March 6, 2012 as instrument No. SC966830.
15. The MZ Mortgage;
16. Notice of Assignment of Rent General in favour of MZ, registered on December 19, 2013 as instrument No. SC1107325;
17. Notice regarding a Development Agreement from the Corporation of the City of Barrie registered on May 12, 2014 as instrument No. SC1129838;
18. Postponement by MZ of the MZ Mortgage in favour of the Corporation of the City of Barrie registered on May 12, 2014 as instrument No. SC1129839;
19. Transfer Easement granted by the Debtor in favour of Enbridge Gas registered on January 26, 2015 as instrument No. SC1189600;
20. Postponement by MZ of the MZ Mortgage in favour of Enbridge Gas registered on January 26, 2015 as instrument No. SC1189601;
21. Condominium Declaration from the Debtor registered on October 24, 2016 as instrument No. SC1354411;
22. Notice from Simcoe Standard Condominium Corporation No. 420 registered on November 8, 2016 as instrument No. SC1359888;
23. Notice regarding the MZ Mortgage from the Debtor to MZ registered on December 15, 2016 as instrument No. SC1372009;
24. Condo Amendment to Declaration to create a phase from the Debtor to MZ registered on March 9, 2018 as instrument No. SC1496430; and
25. Notice regarding the MZ Mortgage from the Debtor to MZ registered on October 1, 2018 as instrument No. SC1544840.

Regarding PIN Nos.: 59420-0095, 59420-0096, 59420-0098, 59420-0099, 59420-0101, 59420-0102, 59420-0103, 59420-0104, 59420-0108, 59420-0111, 59420-0112, 59420-0117, 59420-0119, 59420-0120, 59420-0121, 59420-0122, 59420-0123, and 59420-0124 (LT):

26. Notice of Subdivision Agreement between the Corporation of the City of Barrie and 2293420 Ontario Inc. registered on March 6, 2012 as instrument No. SC966830.
27. The MZ Mortgage;
28. Notice of Assignment of Rent General in favour of MZ, registered on December 19, 2013 as instrument No. SC1107325;
29. Notice regarding a Development Agreement from the Corporation of the City of Barrie registered on May 12, 2014 as instrument No. SC1129838;
30. Postponement by MZ of the MZ Mortgage in favour of the Corporation of the City of Barrie registered on May 12, 2014 as instrument No. SC1129839;
31. Transfer Easement granted by the Debtor in favour of Enbridge Gas registered on January 26, 2015 as instrument No. SC1189600;
32. Postponement by MZ of the MZ Mortgage in favour of Enbridge Gas registered on January 26, 2015 as instrument No. SC1189601;
33. Condominium Declaration from the Debtor registered on October 24, 2016 as instrument No. SC1354411;
34. Notice regarding the MZ Mortgage from the Debtor to MZ registered on December 15, 2016 as instrument No. SC1372009;
35. Condo Amendment to Declaration to create a phase from the Debtor to MZ registered on March 9, 2018 as instrument No. SC1496430;
36. Notice regarding Section 98 Group Indemnity Agreement from Simcoe Standard Condominium Corporation No. 420 registered on March 26, 2018 as instrument No. SC1499656; and
37. Notice regarding the MZ Mortgage from the Debtor to MZ registered on October 1, 2018 as instrument No. SC1544840.

CERTIFICATE OF STATUS

We obtained a certificate of status dated March 12, 2020 in respect of the Debtor issued by the Ministry of Government Services confirming the corporate existence of the Debtor as at that date.

SECURITY REVIEW

Subject to the assumptions and qualifications set out in this letter, we have the following comments on and opinions with respect to the Documents.

MZ Loan

In December 2013, MZ provided mortgage loan financing to the Debtor for the acquisition and development of the property municipally known as 85 Sydenham Wells, Barrie, Ontario (the "**Development**"). The mortgage loan financing had a two-year term, which was subsequently extended to mature on November 1, 2016. On September 20, 2016, MZ and the Debtor entered into a commitment letter pursuant to which MZ provided a loan of \$15.45 million (as amended, the "**MZ Loan**"). The MZ Loan refinanced the 2013 mortgage loan and provided additional construction financing for the Development. As security for the loan, the Debtor granted MZ (i) the MZ Mortgage (as updated and amended), (ii) a general assignment of leases and rents and (iii) a general security agreement, dated December 13, 2016, over, *inter alia*, the Debtor's intangible property, books and records, equipment, inventory, other property, and proceeds derived from the Property (the "**GSA**"). The MZ Loan was amended on December 9, 2016 to, among other things, increase the loan amount to \$17,500,000. The MZ Loan was amended once again on September 14, 2018 to, among other things, increase the loan amount to \$22,000,000. Both amendments were registered against title to the Undeveloped Property and Unsold Units.

We understand that all of the indebtedness, liabilities and obligations of the Debtor to MZ were guaranteed by Jordan Zukowski and Rudi Zukowski (collectively, the "**Guarantors**") in favour of MZ (the "**Guarantees**"), however we have not reviewed the Guarantees or any associated documents in connection with this opinion.

In respect of the MZ Loan to the Debtor, the Debtor granted the following security:

1. *MZ Mortgage.* The MZ Mortgage grants, by its terms, a fixed charge on the Property in favour of MZ securing the full amount of the MZ Loan. The MZ Mortgage was registered on title to the Property on December 19, 2013.
2. *Assignment of Rents.* The Assignment of Rents was registered against title to the Property on December 19, 2013. The Assignment of Rents provides that the Debtor assigned to MZ all rents derived from the then-undeveloped 85 Sydenham Wells, Barrie, Ontario.
3. *PPSA Registrations.* MZ is registered as a secured party against, among other things, the Debtor's inventory, equipment, and accounts.

OPINIONS WITH RESPECT TO VALIDITY AND PRIORITY OF SECURITY

In our opinion, based on the assumptions and subject to the qualifications set out herein, the MZ Mortgage is a valid first charge on the Property, subject to the postponements granted by MZ to the Corporation of the City of Barrie and Enbridge Gas.

We have not reviewed any documents related to the Construction Liens. As a result, at this time, we are not providing any opinion on the relative priority of the MZ Mortgage over the Construction Liens, if they are found to be valid.

In our opinion, based on the assumptions and subject to the qualifications set out herein, MZ also holds a first-priority security interest in the Debtor's intangible property, books and records, equipment, inventory, other property, and proceeds derived from the Property.

This review is provided to you in your capacity as court-appointed receiver of the Debtor pursuant to the order of the Honourable Mr. Justice Hailey dated February 12, 2020. This letter may not be relied on by any other person without our prior written consent.

Please do not hesitate to contact us if you wish to discuss any of the foregoing.

Yours very truly,
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP



Jeffrey Larry
JL:er
Encl.

SCHEDULE "A"

DOCUMENTS REVIEWED

Documents not defined below shall have the meaning ascribed to them in the body of the security review letter.

MZ Loan and Security Documents:

1. Charge/Mortgage granted by the Debtor in favour of MZ, in the original principal sum of \$15,000,000.00, registered on December 19, 2013 as instrument No. SC1107324, as well as the amendments increasing the principal sum owing to \$17,500,000, then \$22,000,000 (registered as instrument No. SC1107324).
2. Notice of Assignment of Rent General in favour of MZ, registered on December 19, 2013 as instrument No. SC1107325.
3. General Security Agreement given by the Debtor, dated December 13, 2016, for all present and future indebtedness, liabilities, and obligations of the Debtor to MZ, perfected by financing statement registered as no. 20131216 1415 1862 1438, file reference no. 692617257.

DOCUMENTS NOT REVIEWED

The following documents have not been reviewed as part of giving this opinion:

1. All loan and security documentation in respect of the Guarantees;
2. Documents in connection with the construction liens registered by Jeffrey McKeever, 1267989 Ontario Inc., and Mack Construction Inc., or any other construction lien claimants;
3. Letters of Credit, security agreements, and other documents associated with the Bank of Montreal's financing statement.

SCHEDULE "B"

ASSUMPTIONS

For the purposes of conducting this review, we have assumed the following:

1. that the signatures on the Documents are genuine and that the Documents submitted to us as photocopies or facsimile copies conform to authentic original Documents, and that all Documents were fully completed prior to execution and delivery;
2. that the Debtor had at all relevant times the necessary corporate status, power and capacity, as applicable, to grant to MZ the Documents to which it is party and to perform its obligations under each of those Documents;
3. that there are no outstanding amounts owing to any of the lessees under the Leases that could have priority to the MZ Mortgage;
4. that the Documents were duly authorized, executed and delivered to and in favour of MZ;
5. that the Documents were provided, as the case may be, to MZ by the Debtor on the basis of informed consent and advice and for value;
6. that MZ holds proper evidence of the amount of indebtedness owed to it by the Debtor and the dates on which such indebtedness was incurred;
7. that none of the Documents has been assigned, amended, superseded, released, discharged or otherwise impaired, either in whole or in part;
8. that the Debtor holds legal and beneficial title to the Property and that the Property was, at the time of the granting of the relevant security interest, and is presently, in Ontario;
9. the accuracy and completeness of the descriptions of all property of the Debtor referred to in any Document;
10. that there are no agreements to which the Debtor is a party or was a party at the time of the execution of the Documents which might impair its ability to execute and deliver or grant any of the Documents to which it is a party or to perform any of its obligations thereunder;
11. that none of the Documents, originals or copies of which we examined, has been amended (except as set out in this letter), and there are no other agreements or understandings between the parties that would amend, supplement or qualify any provisions of the Documents;

12. to the extent that a security interest in investment property (as defined in the PPSA) has been granted by the Debtor to MZ, MZ has control of such investment property;
13. that no execution creditor or other person has seized or caused seizure of any asset of the Debtor; and
14. that the public records examined by us in connection with this report were complete and accurate when examined.

SCHEDULE "C"

QUALIFICATIONS

1. We express no opinion with respect to title to any of the personal property or the Property charged by the Documents.
2. We express no opinion as to the priority of any security interest created by the Documents as against any statutory liens, charges, deemed trusts or other priorities.
3. We express no opinion at to the priority of any security interest created by the Documents as against any purchase money security interests.
4. We express no opinion as to any security interest created by the Documents with respect to any property of the Debtor that is transformed in such a way that it is not identifiable or traceable or any proceeds of property of the Debtor that are not identifiable or traceable.
5. We express no opinion as to the creation or validity of any charge of, assignment or transfer of or security interest in any of the following property or any interest of the Debtor or the Guarantor therein: (i) any policy of insurance or contract of annuity; (ii) any permits, quotas, licenses and other property which is not personal property; and (iii) any property consisting of a receivable, license, approval, privilege, franchise, permit, lease or agreement (collectively, the "Special Property") to the extent that the terms of the Special Property or any applicable law prohibits its assignment or requires as a condition of its assignability, a consent, approval, notice or other authorization or registration which has not been made or given.
6. No opinion is expressed under the terms of this opinion with respect to the laws of any jurisdiction (other than Ontario) to the extent that such laws may govern the validity, perfection, effect of perfection or non-perfection of the security interests created by the Documents as a result of the application of Ontario conflict of law rules.
7. We did not investigate whether, any steps were taken in connection with the registration of the Documents or of any of the interests created thereunder: (i) under the Patent Act (Canada), the Trade-marks Act (Canada), the Industrial Designs Act (Canada), the Integrated Circuit Topography Act (Canada), the Copyright Act (Canada) or the Plant Breeders' Rights Act (Canada); (ii) in respect of any vessel which is registered or recorded under the Canada Shipping Act (Canada); (iii) in respect of any rolling stock to which the provisions of the Canada Transportation Act (Canada) or the Shortline Railways Act (Ontario) may apply; or (iv) under the Financial Administration Act (Canada).

8. Provisions of the Document which purport to exculpate any secured party from liability for its acts or which purport to confirm the continuance of obligations notwithstanding any act or omission or other matter are subject to the discretion of an Ontario Court.
9. An Ontario Court may decline to enforce the rights of indemnity and contribution potentially available under the Documents to the extent that they are found to be contrary to equitable principles or public policy.
10. An Ontario Court may decline to enforce those provisions of the Documents which purport to allow a determination, calculation or certificate of a party thereto as to any manner provided for therein to be final, conclusive and binding upon any other party thereto if such determination is found to be inaccurate on its face or to have reached or made on an arbitrary or fraudulent basis.
11. Wherever any matter or thing is to be determined or done in the discretion of any secured party, such discretion may be required to be exercised in a commercially reasonable manner and in good faith.
12. With respect to the charge of, or transfer or pledge or assignment of, or the granting of a security interest in, any account or like personal property pursuant to the Documents, notice may have to be given to the obligor thereunder and the secured creditors may be subject to the equities between the obligor and the grantor of the security interest in the event that it wishes to enforce any such account or like personal property as against the obligor under such account or like personal property.
13. Powers of attorney contained in any of the Documents, although expressed to be irrevocable, may in some circumstances be revoked, including without limitation, pursuant to the Substitute Decisions Act (Ontario).
14. Pursuant to section 8 of the Interest Act (Canada), no fine, penalty or rate of interest may be exacted on any arrears of principal or interest secured by a mortgage on real property that has the effect of increasing the charge on the arrears beyond the rate of interest payable on principal money not in arrears.

SCHEDULE "D"

SUMMARY OF SECURITY SEARCHES AGAINST FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION (the "DEBTOR")

Corporate History

The Debtor was incorporated on January 25, 2001 pursuant to the laws of the Province of Ontario.

Personal Property Security Act (Ontario)

(File Currency: March 11, 2020)

1. Secured Party: MarshallZehr Group Inc.

Debtor: Fernwood Developments (Ontario) Corporation

Collateral Classification: Accounts, Other

General Collateral Description: General assignment of leases and rents covering the property municipally known as 85 Sydenham Wells, Barrie, Ontario

Registration No.: 20131216 1414 1862 1437

Registration No.: 20161206 1120 1862 2209 (Renewed for 5 years)

File No. 692617248

Registration Date: December 16, 2013 and renewed on December 6, 2016

Registration Period: 5 Years and renewed for 5 years

Expiry Date: December 16, 2023

2. Secured Party: MarshallZehr Group Inc.

Debtor: Fernwood Developments (Ontario) Corporation

Collateral Classification: Inventory, Equipment, Accounts, Other, Incl

General Collateral Description: None

Registration No.: 20131216 1415 1862 1438

Registration No.: 20161206 1120 1862 2208 (Renewed for 5 years)

File No. 692617257

Registration Date: December 16, 2013 and renewed on December 6, 2016

Registration Period: 5 Years

Expiry Date: December 16, 2023

3. Secured Party: BANK OF MONTREAL

Debtor: Fernwood Developments (Ontario) Corporation

Collateral Classification: Inventory, Equipment, Accounts, Other, Incl

General Collateral Description: LF130 ONTARIO PERSONAL PROPERTY SECURITY ACT SECURITY AGREEMENT

Registration No.: 20180507 1141 1532 3105

File No. 739063611

Registration Date: May 7, 2018

Registration Period: 5 Years

Expiry Date: May 7, 2023

Bank Act (Ontario)

Date of Search: March 12, 2020

CLEAR

Official Receiver (Bankruptcy)

BIA Estate No: 31-458897

BIA Estate Name: FERNWOOD DEVELOPMENTS (ONTARIO)
CORPORATION

Estate Type: Receivership

Date of Proceeding: February 21, 2020

Total Liabilities: \$0

Executions: Ontario (all 49 Ontario enforcement offices)

Date of Search: March 12, 2020

County: County of Wellington (Guelph)

Creditor: 2150659 ONTARIO INC

EXECUTION #: 19-0000236

DATE OF ISSUE: 2019-JUN-28

EFFECTIVE DATE: 2019-JUL-02

EXPIRY DATE: 2025-JUN-27

Date of Search: March 12, 2020

County: County of Simcoe (Barrie)

Creditor: 2150659 ONTARIO INC

EXECUTION #: 19-0000715

DATE OF ISSUE: 2019-JUN-28

EFFECTIVE DATE: 2019-JUL-02

EXPIRY DATE: 2025-JUN-27

SCHEDULE "E"

LEGAL DESCRIPTION OF REAL PROPERTY

Municipal Address: 85 Sydenham Wells, Suite 1 Barrie, Ontario

PIN No. 59420-0001 (LT): UNIT 1, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411;

Municipal Address: 85 Sydenham Wells, Suite 10 Barrie, Ontario

PIN No. 59420-0010 (LT): UNIT 10, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 11 Barrie, Ontario

PIN No. 59420-0011 (LT): UNIT 11, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 14 Barrie, Ontario

PIN No. 59420-0014 (LT): UNIT 14, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 22 Barrie, Ontario

PIN No. 59420-0022 (LT): UNIT 22, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 25 Barrie, Ontario

PIN No. 59420-0025 (LT): UNIT 25, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 30 Barrie, Ontario

PIN No. 59420-0030 (LT): UNIT 30, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 31 Barrie, Ontario

PIN No. 59420-0031 (LT): UNIT 31, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 65 Barrie, Ontario

UNIT 65, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 66 Barrie, Ontario

PIN No. 59420-0066 (LT): UNIT 66, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 68 Barrie, Ontario

PIN No. 59420-0068 (LT): UNIT 68, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 69 Barrie, Ontario

PIN No. 59420-0069 (LT): UNIT 69, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 71 Barrie, Ontario

PIN No. 59420-0071 (LT): UNIT 71, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 72 Barrie, Ontario

PIN No. 59420-0072 (LT): UNIT 72, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 73 Barrie, Ontario

PIN No. 59420-0073 (LT): UNIT 73, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 77 Barrie, Ontario

PIN No. 59420-0077 (LT): UNIT 77, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 78 Barrie, Ontario

PIN No. 59420-0078 (LT): UNIT 78, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 81 Barrie, Ontario

PIN No. 59420-0081 (LT): UNIT 81, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 87 Barrie, Ontario

PIN No. 59420-0087 (LT): UNIT 87, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 88 Barrie, Ontario

PIN No. 59420-0088 (LT): UNIT 88, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 89 Barrie, Ontario

PIN No. 59420-0089 (LT): UNIT 89, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 90 Barrie, Ontario

PIN No. 59420-0090 (LT): UNIT 90, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 91 Barrie, Ontario

PIN No. 59420-0091 (LT): UNIT 91, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 92 Barrie, Ontario

PIN No. 59420-0092 (LT): UNIT 92, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 93 Barrie, Ontario

PIN No. 59420-0093 (LT): UNIT 93, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Municipal Address: 85 Sydenham Wells, Suite 94 Barrie, Ontario

PIN No. 59420-0094 (LT): UNIT 94, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Pin No. 59420-0033 (LT): UNIT 33, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

Pin No. 59420-0042 (LT): UNIT 42, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

Pin No. 59420-0043 (LT): UNIT 43, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

Pin No. 59420-0046 (LT): UNIT 46, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

Pin No. 59420-0054 (LT): UNIT 54, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

Pin No. 59420-0057 (LT): UNIT 57, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

Pin No. 59420-0062 (LT): UNIT 62, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

Pin No. 59420-0063 (LT): UNIT 63, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

Pin No. 59420-0095 (LT): UNIT 95, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Pin No. 59420-0096 (LT): UNIT 96, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST;

SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Pin No. 59420-0098 (LT): UNIT 98, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Pin No. 59420-0099 (LT): UNIT 99, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Pin No. 59420-0101 (LT): UNIT 101, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Pin No. 59420-0102 (LT): UNIT 102, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Pin No. 59420-0103 (LT): UNIT 103, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Pin No. 59420-0104 (LT): UNIT 104, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Pin No. 59420-0108 (LT): UNIT 108, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Pin No. 59420-0111 (LT): UNIT 111, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Pin No. 59420-0112 (LT): UNIT 112, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Pin No. 59420-0117 (LT): UNIT 117, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Pin No. 59420-0119 (LT): UNIT 119, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Pin No. 59420-0120 (LT): UNIT 120, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Pin No. 59420-0121 (LT): UNIT 121, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Pin No. 59420-0122 (LT): UNIT 122, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Pin No. 59420-0123 (LT): UNIT 123, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

Pin No. 59420-0124 (LT)L UNIT 124, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN No. 58831-1862 (LT): PART OF BLOCK 6, PLAN 51M983, PART 3 PLAN 51R40027; SUBJECT TO AN EASEMENT OVER PART 3 PLAN 51R40027 AS IN SC1189600; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS SIMCOE STANDARD CONDOMINIUM PLAN NUMBER 420 AS IN SC1354411; SUBJECT TO AN EASEMENT OVER PART 3 PLAN 51R40027 IN FAVOUR OF SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AS IN SC1354411; SUBJECT TO AN EASEMENT OVER PART 3 PLAN 51R40027 IN FAVOUR OF SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AS IN SC1496430; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS SIMCOE STANDARD CONDOMINIUM PLAN NUMBER 420 AS IN SC1496430; CITY OF BARRIE

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APPENDIX E

ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of the 30th day of April, 2021.

BETWEEN:

RSM CANADA LIMITED,

in its capacity as Court-appointed receiver of the property, assets and undertakings of Fernwood Developments (Ontario) Corporation, and not in its personal or corporate capacity and without personal or corporate liability

(the “Vendor”)

- and -

2815864 ONTARIO INC.

(the “Purchaser”)

RECITALS:

- A. Pursuant to the Receivership Order, RSM Canada Limited was appointed receiver to, among other things, market and sell the Debtor’s property, assets and undertakings; and
- B. Subject to the Court issuing the Approval and Vesting Order, the Purchaser has agreed to purchase from the Vendor, and the Vendor has agreed to sell to the Purchaser, the right, title and interest of the Debtor in and to the Purchased Assets on the terms and conditions set out herein.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions

In this Agreement, the following terms shall have the meanings set out below unless the context requires otherwise:

- (a) “**Agreement**” means this asset purchase agreement, including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

- (b) “**Applicable Laws**” means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;
- (c) “**Approval and Vesting Order**” means an order made by the Court approving the Transaction and vesting in the Purchaser all the right, title and interest of the Debtor in the Purchased Assets free and clear of all Encumbrances (except for Permitted Encumbrances), in form and substance satisfactory to the Vendor and the Purchaser, acting reasonably;
- (d) “**Assumed Contracts**” has the meaning ascribed to it in Section 2.8;
- (e) “**Assumed Liabilities**” has the meaning ascribed to it in Section 2.7;
- (f) “**Books and Records**” means all of the books and records directly or indirectly related to the Project or the Purchased Assets, including, without limitation, rent rolls and tenant registers with respect to the Condominium Units, all records required to be kept by the condominium corporation registered or to be registered within the Lands pursuant to the provisions of section 55 of the *Condominium Act, 1998* (Ontario), the performance audit required pursuant to the provisions of section 44 of the *Condominium Act, 1998* (Ontario), any third party reports prepared by consultants in order to satisfy any applicable builder bulletins issued by Tarion, all plans and documentation relevant to the development of the Project including, without limitation, studies, tests, surveys, investigations, specifications, permits, appraisals, reports (including without limitation, building condition, soil and environmental reports, market studies), applications and correspondence with any applicable Government Authority related to the development of the Project (including, without limitation, rezoning, variance, development and site plan applications), engineering drawings and plans, architectural plans, working drawings, mechanical plans, structural plans, plumbing plans, landscaping plans, and any other documentation prepared to illustrate or define a particular aspect of the development of the Project;
- (g) “**Buildings**” means, individually or collectively, as the context requires, all of the buildings, structures and fixed improvements located on, in or under the Lands, and improvements and fixtures contained in or on such buildings and structures used in the operation of same;
- (h) “**Business Day**” means a day on which banks are open for business in City of Toronto, but does not include a Saturday, Sunday, or statutory holiday recognized in the Province of Ontario;
- (i) “**Chattels**” means all tangible personal property located in or on the Condominium Units, the Buildings or the Lands;
- (j) “**City**” means The Corporation of the City of Barrie;

- (11) **“City Cash Collateral”** means all security deposited by or on behalf of the Debtor with the City as required by the City in connection with the development and construction of the Project including, without limitation (A) irrevocable letters of credit (B) letters of guarantee (C) cash and/or (D) any other form of security held by the City as security for the Debtor’s obligations to the City in connection with the site plan agreement D11-1524 and/or any other development agreement(s) between the Debtor and the City ;
- (l) **“Claims”** collectively means:
- (i) the claim commenced by the Debtor against MarshallZehr in the Ontario Superior Court of Justice by statement of claim bearing Court File No. CV-20-00000253-0000; and
 - (ii) any cause of action that the Debtor may have against Pensio Property Management Group Inc., Ai Guarantee Inc., Nationwide Rentsure Canada Corp., and any affiliated parties;
- (m) **“Closing”** means the completion of the purchase and sale of the Purchased Assets in accordance with the provisions of this Agreement;
- (n) **“Closing Date”** means the first Business Day after the Approval and Vesting Order becomes a Final Order or such other date as may be agreed to by the Parties;
- (o) **“Closing Time”** means 10:00 am EST on the Closing Date;
- (p) **“Condominium Units”** means the condominium units legally described as set out in **Schedule “A”** hereto, together with an undivided interest in the common elements appurtenant to such units and the exclusive use of those parts of the common elements attaching to such units, as set out in the declaration made by the Debtor and registered on title to the condominium units as instrument number SC1354411, as amended;
- (q) **“Contracts”** means all contracts, agreements, leases and arrangements to which the Debtor is bound or affected in connection with the Purchased Assets, excluding the Tenant Leases;
- (r) **“Court”** means the Ontario Superior Court of Justice (Commercial List);
- (s) **“Debtor”** means Fernwood Developments (Ontario) Corporation;
- (t) **“Encumbrance”** means any security interests (whether contractual, statutory, or otherwise), mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, leases, title retention agreements, reservations of ownership, demands, executions, levies, charges, rights of way, options or other rights to acquire any interest in any assets, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, and all contracts to create any of the foregoing, or

encumbrances of any kind or character whatsoever, other than Permitted Encumbrances;

- (u) “**Ereg**” has the meaning ascribed to it in Section 3.6;
- (v) “**Estimated Fees**” has the meaning ascribed to it in Section 2.2(e).
- (w) “**Excluded Assets**” has the meaning ascribed to it in Section 2.5.
- (x) “**Final Order**” means, in respect of any order of the Court or any other court: (i) the operation and effect of such order shall not have been stayed, amended, modified, reversed, dismissed or appealed within the applicable appeal period; or (ii) any motion or other proceeding to stay, amend, modify, reverse, or appeal such order shall have been withdrawn or dismissed with no further appeal therefrom and the applicable appeal period shall have expired;
- (y) “**Government Authority**” means any person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial or municipal government having or claiming to have jurisdiction over part or all of the Purchased Assets, the Transaction or one or both of the Parties;
- (z) “**Lands**” means the lands and premises legally described as set out in **Schedule “B”** hereto and all appurtenant interests thereto;
- (aa) “**Liabilities**” means all costs, expenses, charges, debts, liabilities, claims, demands and obligations, whether primary or secondary, direct or indirect, fixed, contingent, absolute or otherwise;
- (bb) “**MarshallZehr**” means MarshallZehr Group Inc.
- (cc) “**Parties**” means the Vendor, the Purchaser and any other Person who may become a party to this Agreement. “**Party**” means any one of the foregoing;
- (dd) “**Permitted Encumbrances**” means those Encumbrances listed in **Schedule “C”** attached hereto and in Schedule “D” to the Approval and Vesting Order;
- (ee) “**Person**” means an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;
- (ff) “**Prepaid Expenses and Deposits**” means all prepayments, prepaid charges, deposits, security deposits, sums and fees in any way related to the Purchased Assets, including, without limitation, the unused portion of amounts prepaid by or on behalf of the Debtor or the Vendor relating to the Purchased Assets including Taxes, maintenance agreements, utilities, rents, and deposits with any public utility or any Governmental Authority;

- (gg) **“Priority Payables”** means any and all amounts which rank in priority to the Security as at Closing;
- (hh) **“Project”** means the freehold stacked townhouse condominium project consisting of 94 residential units developed by the Debtor on real property municipally known as 85 Sydenham Wells and 242 - 252 Penetanguishine Road, Barrie, Ontario;
- (ii) **“Project Documents”** means collectively, all documentation relating to the development of the Project including, without limitation, the following:
 - (i) all permits, consents, orders, waivers, applications, authorizations, licences, certificates, development approvals, registrations, franchises, rights, privileges and exemptions or the like issued or granted by any Government Authority or by any Person with respect to the Project;
 - (ii) all agreements between the Debtor and any Government Authority relating to the Debtor’s property, assets and undertakings and/or the development of the Project;
 - (iii) all Project plans and specifications, including, without limitation (A) initial designs (B) structural, architectural, mechanical, electrical, landscape and interior design specifications and (C) construction drawings;
 - (iv) all advertising, sales and promotional materials in connection with the marketing of the Project; and
 - (v) the standard form agreement of purchase and sale and disclosure documents used by the Debtor in connection with the sale of condominium units in the Project, to the extent applicable;
- (jj) **“Purchase Price”** shall have the meaning ascribed to it in Section 2.2;
- (kk) **“Purchased Assets”** means collectively all of the Debtor’s and Vendor’s right, title and interest in all of the property, assets and undertakings of the Debtor, including, but not limited to, the following assets:
 - (i) Assumed Contracts;
 - (ii) Books and Records;
 - (iii) Buildings;
 - (iv) Chattels;
 - (v) City Cash Collateral;
 - (vi) Claims;
 - (vii) Condominium Units;

- (viii) Lands;
 - (ix) Prepaid Expenses and Deposits;
 - (x) Project Documents;
 - (xi) Receivables;
 - (xii) Tarion Cash Collateral;
 - (xiii) Tenant Leases;
 - (xiv) all cash, bank balances, moneys in possession of banks and other depositories, term or time deposits and similar cash items of, owned or held by, or for the account of, the Debtor;
 - (xv) all refundable Taxes and refunds in respect of Taxes (or assessments or reassessments for Taxes); and
 - (xvi) all rights and interests under or pursuant to all warranties, representations and guarantees, express, implied or otherwise of or made by suppliers to the Debtor in connection with the Purchased Assets or the Assumed Liabilities, other than the Excluded Assets;
- (ll) “**Purchaser**” shall have the meaning ascribed to it on page 1 above;
- (mm) “**Receivables**” means all accounts receivable, bills receivable, trade accounts, book debts, insurance claims, and choses-in-action, now or hereafter due or owing to the Vendor, together with any unpaid interest accrued on such items and any security or collateral for such items, including recoverable deposits, attributable to the period prior to Closing;
- (nn) “**Receiver’s Borrowings**” means the amounts borrowed by the Receiver from MarshallZehr to pursuant to paragraph 21 of the Receivership Order which, as at April 23, 2021, was in the amount of \$829,938.79 for principal and interest;
- (oo) “**Receiver’s Borrowings Charge**” means the charge granted by the Court in paragraph 21 of the Receivership Order as security for payment of the Receiver’s Borrowings;
- (pp) “**Receiver’s Charge**” means the charge in favour of the Receiver and its lawyers granted by the Court in paragraph 18 of the Receivership Order as security for their respective fees and expenses;
- (qq) “**Receivership Order**” means the order of the Court dated February 12, 2020 appointing RSM Canada Limited as receiver of the property, assets and undertakings of the Debtor;

- (rr) “**Rights**” has the meaning ascribed to it in Section 2.9;
- (ss) “**Secured Debt**” means any and all amounts secured by the Security which, as at April 23, 2021, was in the amount of \$26,423,579.49 for principal and interest and does not include fees, cost recoveries or expenses;
- (tt) “**Security**” means all security documents granted by the Debtor to MarshallZehr, including without limitation the charge/mortgage registered against title to the Condominium Units and the Lands on December 19, 2013 in the principal amount of \$15.0 million as instrument number SC1107324, as amended to increase the principal amount to \$22.0 million pursuant to notices registered against title to the Condominium Units and the Lands on December 15, 2016 as instrument number SC1372009 and on October 1, 2018 as instrument number SC1544840, and the general security agreement dated December 17, 2013;
- (uu) “**Tarion**” means Tarion Warranty Corporation, its successors and assigns;
- (vv) “**Tarion Cash Collateral**” means all security deposited by or on behalf of the Debtor with Tarion as required by Tarion in connection with the development and construction of the Project including, without limitation (A) irrevocable letters of credit (B) letters of guarantee (C) cash and/or (D) any other form of security held by Tarion as security for the Debtor’s obligations to Tarion in connection therewith;
- (ww) “**Taxes**” means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax, and any interest, fines and penalties, imposed by any Governmental Authority, whether disputed or not;
- (xx) “**Tenant Leases**” means the leases entered into by the Debtor and/or the Vendor with tenants of the Condominium Units as set out in **Schedule “D”** hereto, including any amounts due or to become due thereunder;
- (yy) “**Transaction**” means the transaction of purchase and sale and assignment and assumption contemplated by this Agreement; and
- (zz) “**Vendor**” shall have the meaning ascribed to it on page 1 above.

1.2 Section References

Unless the context requires otherwise, references in this Agreement to Sections are to Sections of this Agreement.

1.3 Schedules

The following Schedules shall form an integral part of this Agreement:

Schedule "A"	Condominium Units
Schedule "B"	Lands
Schedule "C"	Permitted Encumbrances
Schedule "D"	Tenant Leases

ARTICLE 2 - PURCHASE AND SALE

2.1 Purchase and Sale of Purchased Assets

On the Closing Date, subject to the terms and conditions of this Agreement, the Vendor shall sell and the Purchaser shall purchase the Purchased Assets and shall assume the Assumed Liabilities.

2.2 Purchase Price

The purchase price payable by the Purchaser to the Vendor for the Purchased Assets shall be equal to the aggregate of the following amounts (collectively, the "**Purchase Price**"):

- (a) \$24,929,000 of the Secured Debt;
- (b) all amounts secured by the Receiver's Borrowings Charge as at Closing;
- (c) all amounts secured by the Receiver's Charge as at Closing;
- (d) without duplication, the amount necessary to satisfy the Priority Payables; and
- (e) the amount of \$150,000 estimated by the Vendor to be the aggregate fees, disbursements and expenses for the period from and after the Closing to the Vendor's discharge as receiver under the Receivership Order (the "**Estimated Fees**"). Should the aggregate of the actual fees, disbursements and expenses incurred by the Vendor (x) be less than the amount so paid, any surplus shall be refunded to the Purchaser (y) be more than the amount of the Estimated Fees, the Purchaser shall pay the difference to the Vendor.

2.3 Satisfaction of Purchase Price

The Purchaser shall satisfy the Purchase Price at the Closing Date as follows:

- (a) by assumption of \$24,929,000 of the Secured Debt;
- (b) by assumption of the amount of the Receiver's Borrowings on Closing;
- (c) by payment to the Vendor, in trust, of the Estimated Fees and all amounts secured by the Receiver's Charge on Closing, by way of a certified cheque, wire transfer or bank draft;
- (d) by payment to the Vendor, in trust, of the amount of Priority Payables, without duplication, by way of a certified cheque, wire transfer or bank draft; and

- (e) by the assumption of the Assumed Liabilities.

2.4 Allocation of Purchase Price

The Purchase Price shall be allocated among the Purchased Assets as determined following Closing by the Parties acting reasonably.

2.5 Excluded Assets

The Purchaser may, at its option, exclude any of the Purchase Assets from the Transaction (the “**Excluded Assets**”) at any time prior to Closing upon delivery of prior written notice to the Vendor, whereupon such assets shall be deemed to form part of the Excluded Assets, provided, however, that there shall be no reduction in the Purchase Price as a result of such exclusion.

2.6 Taxes and Elections

- (a) The Purchaser shall be responsible for the payment on Closing of all Taxes that are required to be paid or remitted in connection with the consummation of the transactions contemplated in this Agreement.
- (b) At the Closing, the Vendor and the Purchaser shall, if applicable, jointly execute an election under Section 167 of the *Excise Tax Act* (Canada) to cause the sale of the Purchased Assets to take place on a HST-free basis under Part IX of the *Excise Tax Act* (Canada) and the Purchaser shall file such election with its HST return for the applicable reporting period in which the sale of the Purchased Assets takes place.
- (c) At the Closing, the Vendor and the Purchaser, if applicable, shall execute jointly an election in prescribed form under Section 22 of the *Income Tax Act* (Canada) and shall each file such election with their respective tax returns for their respective taxation years that include the Closing Date.
- (d) The Purchaser agrees to indemnify and save the Vendor harmless from and against all claims and demands for payment of all Taxes payable by Purchaser in connection with the purchase of the Purchased Assets, including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such Taxes when due.

2.7 Assumed Liabilities

From and after Closing, the Purchaser shall assume and be liable for the following (collectively, the “**Assumed Liabilities**”):

- (a) Liabilities incurred under or in respect of the Permitted Encumbrances;
- (b) Liabilities under the Receiver’s Borrowings Charge; and
- (c) Liabilities under the Assumed Contracts and the Tenant Leases that arise out of, are incurred or relate to the period from and after the Closing.

The Purchaser is not assuming, and shall not be deemed to have assumed, any Liabilities of the Debtor or the Vendor other than the Assumed Liabilities, including without limitation any Liabilities arising or accruing from the ownership or use of the Purchased Assets prior to the Closing.

2.8 Assumed Contracts

Save and except as hereinafter set out, the Purchaser shall give notice to the Vendor in writing, at least five (5) Business Days prior to the Closing Date, of those Contracts that it elects to assume on Closing (the "**Assumed Contracts**").

2.9 Assignment of Purchased Assets

Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an assignment or transfer of the Purchased Assets or any right thereunder if an attempted assignment or transfer, without the consent of a third Person, would constitute a breach or in any way adversely affect the rights of the Purchaser hereunder. To the extent that any of the Purchased Assets to be transferred to the Purchaser on the Closing, or any claim, right or benefit arising under or resulting from such Purchased Assets (collectively, the "**Rights**") is not capable of being transferred without the approval, consent or waiver of any third Person, or if the transfer of a Right would constitute a breach of any obligation under, or a violation of, any Applicable Law unless the approval, consent or waiver of such third Person is obtained, then, except as expressly otherwise provided in this Agreement and without limiting the rights and remedies of the Purchaser contained elsewhere in this Agreement, this Agreement shall not constitute an agreement to transfer such Rights unless and until such approval, consent or waiver has been obtained or an order of the Court is granted in the Debtor's receivership proceeding compelling assignment. After the Closing and for a period of 90 days following the Closing or such later date as the Vendor and the Purchaser may agree, the Vendor shall:

- (a) hold the Rights in trust for the Purchaser;
- (b) comply with the terms and provisions of the Rights as agent for the Purchaser at the Purchaser's cost and for the Purchaser's benefit;
- (c) cooperate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Rights to the Purchaser; and
- (d) enforce, at the reasonable request of the Purchaser and at the expense and for the account of the Purchaser, any rights of the Debtor or the Vendor arising from such Rights against any third Person, including the right to elect to terminate any such Rights in accordance with the terms of such Rights upon the written direction of the Purchaser.

In order that the full value of the Rights may be realized for the benefit of the Purchaser, the Vendor shall, at the request, expense and under the direction of the Purchaser, in the name of the Vendor or otherwise as the Purchaser may specify, take all such action and do or cause to be done all such things as are, in the opinion of the Purchaser, acting reasonably, necessary or proper in order that

the obligations of the Debtor or the Vendor under such Rights may be performed in such manner that the value of such Rights is preserved and enures to the benefit of the Purchaser, and that any moneys due and payable and to become due and payable to the Purchaser in and under the Rights are received by the Purchaser. The Vendor shall hold as bare trustee and promptly pay to the Purchaser all moneys collected by or paid to the Vendor in respect of every such Right. To the extent that such approval, consent, waiver or order of the Court has not been obtained by the 90th day following the Closing or such later date as the Vendor and the Purchaser may agree, such Right shall be deemed to be an Excluded Asset and the Vendor may terminate any agreement pertaining to such Right. The Purchaser shall indemnify and hold the Vendor harmless from and against any claim or liability under or in respect of such Rights arising because of any action of the Vendor taken in accordance with this Section.

ARTICLE 3 - CLOSING

3.1 Closing

The completion of the Transaction shall take place at the Closing Time on the Closing Date or as otherwise determined by mutual agreement of the Parties in writing.

3.2 Tender

Any tender of documents or money under this Agreement may be made upon the Parties or their respective counsel and money may be tendered by bank draft drawn upon a Canadian chartered bank, by negotiable cheque payable in Canadian funds and certified by a Canadian chartered bank or trust company, or by wire transfer of immediately available funds to the account specified by that Party.

3.3 Vendor's Deliveries on Closing

At the Closing, the Vendor shall deliver to the Purchaser the following, each in form and substance satisfactory to the Purchaser, acting reasonably:

- (a) a copy of the Approval and Vesting Order(s) and the receiver's certificate contemplated therein;
- (b) a statement of adjustments;
- (c) a general conveyance and assumption of liabilities with respect to Purchased Assets and the Assumed Liabilities;
- (d) if applicable, the elections referred to in Section 2.6;
- (e) a bring down certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Vendor contained in this Agreement are true and correct as of the Closing Date, with the same effect as though made on and as of the Closing Date;

- (f) an undertaking to re-adjust any item on or omitted from the statement of adjustments; and
- (g) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to complete the Transaction.

3.4 Purchaser's Deliveries on Closing

At the Closing, the Purchaser shall deliver to the Vendor the following, each in form and substance satisfactory to the Vendor, acting reasonably:

- (a) payment of the Priority Payables;
- (b) satisfactory evidence of assumption of \$24,929,000 of the Secured Debt;
- (c) a general conveyance and assumption of liabilities with respect to Purchased Assets and the Assumed Liabilities;
- (d) if applicable, the elections referred to in Section 2.6;
- (e) a bring down certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true and correct as of the Closing Date, with the same effect as though made on and as of the Closing Date;
- (f) an undertaking to re-adjust any item on or omitted from the statement of adjustments; and
- (g) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to complete the Transaction.

3.5 Risk

The Purchased Assets shall be and remain at the risk of the Vendor until Closing. From and after Closing, the Purchased Assets shall be at the risk of the Purchaser. In the event that the Purchased Assets shall be damaged prior to Closing, then the Vendor shall advise the Purchaser in writing within twenty-four (24) hours of the Vendor learning of same. In the event that the Purchased Assets shall be materially damaged prior to Closing then the Purchaser shall be entitled, in its sole and absolute discretion, to elect to terminate this Agreement by notice, in writing, to the Vendor and in such event the Parties hereto shall be released from all obligations and liabilities hereunder. If the Purchaser does not elect to terminate this Agreement as set out above, then the Transaction shall be completed in accordance with the terms and conditions hereof and the Purchaser shall be entitled to all proceeds of insurance payable in respect thereof, if any.

3.6 Electronic Registration

In the event that a system for electronic registration (“**Ereg**”) is operative and mandatory in the applicable land registry office, the Purchaser agrees to cause all necessary procedures to be taken, as may be required by the Vendor or the Vendor’s solicitors, to complete the Transaction using Ereg in accordance with the Law Society of Ontario’s guidelines. If Ereg is operative on the Closing Date, (i) the Purchaser agrees to use a lawyer authorized to use Ereg and who is in good standing with the Law Society of Ontario, (ii) the Purchaser’s solicitors will enter into the Vendor’s solicitors’ standard form of escrow closing agreement or document registration agreement, which will establish the procedures for closing the Transaction provided same are in accordance with Law Society guidelines, and (iii) if the Purchaser’s solicitors are unwilling or unable to complete the Transaction using Ereg, then the Purchaser’s solicitors must attend at the Vendor’s solicitors’ office or at another location designated by the Vendor’s solicitors at such time on Closing as directed by the Vendor’s solicitors to complete the Transaction using Ereg utilizing the Vendor’s solicitors’ computer facilities, in which event, the Purchaser shall pay to the Vendor’s solicitors a reasonable fee therefor.

ARTICLE 4 - CONDITIONS

4.1 Mutual Condition re Approval and Vesting Order

This Agreement is conditional on:

- (a) the Court granting the Approval and Vesting Order; and
- (b) the Approval and Vesting Order becoming a Final Order, which may be waived in writing by the Parties at any time.

4.2 Conditions Precedent of the Purchaser

The Purchaser shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Purchaser and may be waived, in whole or in part, in writing, by the Purchaser at any time, and the Vendor agrees with the Purchaser to take all such actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Date:

- (a) *Representations and Warranties.* The representations and warranties of the Vendor in Section 5.1 shall be true and correct at the Closing Date; and
- (b) *Vendor’s Compliance.* The Vendor shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before the Closing Date and shall have executed and delivered to the Purchaser at the Closing Date all the deliveries contemplated in Section 3.3 or elsewhere in this Agreement.

4.3 Conditions Precedent of the Vendor

The Vendor shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Vendor, and may be waived, in whole or in part, in writing by the Vendor at any time, and the Purchaser agrees with the Vendor to take all such actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Representations and Warranties.* The representations and warranties of the Purchaser in Section 5.2 shall be true and correct at the Closing Time; and
- (b) *Purchaser's Compliance.* The Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed by or complied with at or before the Closing Time and shall have executed and delivered to the Vendor at the Closing Time all the deliveries contemplated in Section 3.4 or elsewhere in this Agreement.

4.4 Non-Satisfaction of Conditions

If any condition precedent set out in Sections 4.14.1(b), 4.2 or 4.3 is not satisfied or performed prior to the time specified therefor, the Party for whose benefit the condition precedent is inserted may:

- (a) waive compliance with the condition, in whole or in part, in its sole discretion by written notice to the other Party (but may not claim for any matter waived) and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part; or
- (b) elect on written notice to the other Party to terminate this Agreement, in which event each Party shall be released from all obligations under this Agreement.

4.5 Mutual Condition not Fulfilled

If the condition in Section 4.1(a) shall not have been fulfilled prior to February 26, 2021 or such later date agreed upon by the Parties, then the Vendor or the Purchaser, in such Party's sole discretion, may terminate this Agreement by notice to the other Party, in which event each Party shall be released from all obligations under this Agreement.

ARTICLE 5 - REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of the Vendor

As a material inducement to the Purchaser entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Vendor set out in this Section 5.1, the Vendor hereby represent and warrant to the Purchaser as follows:

- (a) *Due Authorization.* Subject to the granting of the Approval and Vesting Order, the Vendor has all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments;
- (b) *Enforceability of Obligations.* Subject to the granting of the Approval and Vesting Order, this Agreement constitutes a valid and binding obligation of the Vendor, enforceable against the Vendor, in accordance with its terms;
- (c) *HST.* The Vendor is a registrant under Part IX of the *Excise Tax Act* (Canada), and its Business Number is 89657 7715 RT0002; and
- (d) *Residency.* The Vendor is not a non-resident within the meaning of section 116 of the *Income Tax Act* (Canada).

5.2 Representations and Warranties of the Purchaser

As a material inducement to the Vendor entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Vendor are entering into this Agreement in reliance upon the representations and warranties of the Purchaser set out in this Section 5.2, the Purchaser hereby represents and warrants to the Vendor as follows:

- (a) *Incorporation of the Purchaser.* The Purchaser is a corporation duly incorporated under the laws of the jurisdiction of its incorporation and is duly organized, validly subsisting and in good standing under such laws;
- (b) *Due Authorization.* The Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments;
- (c) *Enforceability of Obligations.* Subject to the granting of the Approval and Vesting Order, this Agreement constitutes a valid and binding obligation of the Purchaser, enforceable against the Purchaser, in accordance with its terms;
- (d) *Approvals and Consents.* Except as otherwise provided herein, no authorization, consent or approval of or filing with or notice to any Governmental Authority or other Person is required in connection with the execution, delivery or performance of this Agreement by the Purchaser or the purchase of any of the Purchased Assets hereunder;
- (e) *HST.* The Purchaser is or will on Closing be a registrant under Part IX of the *Excise Tax Act* (Canada); and
- (f) *Residency.* The Purchaser is not a non-resident within the meaning of section 116 of the *Income Tax Act* (Canada).

5.3 Survival of Representations and Warranties

- (a) The representations and warranties of the Vendor contained in Section 5.1 or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive for six (6) months following Closing.
- (b) The representations and warranties of the Purchaser contained in Section 5.2 or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive for six (6) months following Closing.

5.4 Acquisition of Assets on "As Is, Where Is" Basis

The Purchaser acknowledges that the Vendor is selling the Purchased Assets on an "as is, where is" basis as they shall exist on the Closing Date, subject to the terms of the Approval and Vesting Order. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets as it deemed appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations, expressed or implied, pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser. The Purchaser further acknowledges that all written and oral information obtained by the Purchaser from the Vendor or any of its directors, officers, employees, professional consultants or advisors with respect to the Purchased Assets or otherwise relating to the transactions contemplated in this Agreement has been obtained for the convenience of the Purchaser only and is not warranted to be accurate or complete. The Purchaser further acknowledges that the Vendor is under no obligation to deliver the Purchased Assets to the Purchaser and that it shall be the Purchaser's responsibility to take possession of the Purchased Assets.

ARTICLE 6 - TERMINATION

6.1 Termination by the Parties

This Agreement may be terminated:

- (a) upon the mutual written agreement of the Vendor and the Purchaser; and
- (b) pursuant to Sections 4.4(b) or 4.5 by either Party

6.2 Remedies for Breach of Agreement

If this Agreement is terminated as a result of any breach of a representation or warranty, or failure to satisfy a covenant or obligation of a Party, the terminating Party's right to pursue all legal remedies with respect to such breach shall survive such termination. For greater certainty, if any

order of the Court is made which directly or indirectly results in the termination of this Agreement, then no Party shall have any remedy, legal or otherwise, against the other Party or its property.

ARTICLE 7 - POST CLOSING MATTERS

7.1 Post-Closing Receipts

If, following the Closing Date, any of the Purchased Assets are paid to or otherwise received by the Vendor, then the Vendor shall hold such assets in trust for the Purchaser and shall promptly deliver such assets to the Purchaser.

7.2 Books and Records

On the Closing Date, the Vendor shall deliver all Books and Records in its possession, power or control to the Purchaser. The Vendor hereby covenants and agrees to take such additional actions as may be requested by Purchaser, acting reasonably, in order to ensure that the Purchaser is able to obtain any and all Books and Records that are not in the possession or control of the Vendor after Closing Date.

The Purchaser shall preserve and keep the Books and Records which relate to the Purchased Assets for a period of six years from the Closing Date or for any longer period as may be required by any Applicable Law or Governmental Authority. Upon reasonable advance notice, after the Closing Date, the Purchaser will grant the Vendor and RSM Canada Limited in its capacity as trustee in bankruptcy of the Debtor reasonable access during normal business hours, to such Books and Records.

ARTICLE 8 - GENERAL

8.1 Headings and Sections

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

8.2 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

8.3 Currency

Except as otherwise expressly provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian dollars.

8.4 Statutory References

All references in this Agreement to any statute or regulation is to that statute or regulation as now

enacted or as may from time to time be amended, re-enacted or replaced and includes all regulations made thereunder, unless something in the subject matter or context is inconsistent therewith or unless expressly provided otherwise in this Agreement.

8.5 Further Assurances

Each of the Parties shall, from time to time after the Closing Date, at the request and expense of the other, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such documents and further assurances as may be reasonably necessary to give effect to this Agreement.

8.6 Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered personally or transmitted by electronic mail transmission, addressed:

in the case of the Purchaser, as follows:

2815864 Ontario Inc.
465 Phillip Street, Suite 206
Waterloo, ON N2L 6C7

Attention: Cecil Hayes
E-mail: chayes@marshallzehr.com

with a copy to

Chaitons LLP
5000 Yonge Street, 10th floor
Toronto, ON M2N 7E9

Attention: Harvey Chaiton and Sam Rappos
E-mail: harvey@chaitons.com and samr@chaitons.com

and in the case of the Vendor, as follows:

RSM Canada Limited, Court-Appointed
Receiver of Fernwood Developments (Ontario) Corporation
11 King Street West
Suite 700, PO Box 27
Toronto, ON M5H 4C7

Attention: Bryan A. Tannenbaum
Email: btannenbaum@collinsbarrow.com

with a copy to

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1

Attention: Jeff Larry
E-mail: jeff.larry@paliareroland.com

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by electronic mail transmission before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on that Business Day, and if transmitted by electronic mail transmission after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.

8.7 Time

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and the Purchaser or by their respective solicitors.

8.8 Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.

8.9 Amendments and Waiver

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Purchaser and the Vendor. The Vendor and the Purchaser may consent to any such amendment at any time prior to the Closing with the prior authorization of their respective boards of directors.

8.10 Entire Agreement

This Agreement and the attached Schedules constitute the entire agreement between the Parties with respect to the subject matter and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by the Parties. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a waiver or continuing waiver unless otherwise expressly provided in writing duly executed by the Party to be bound thereby. Subject to the Approval & Vesting Order being issued by the Court, this Agreement is intended to create binding obligations on the part of the Vendor as set forth herein and on acceptance by the Purchaser, is intended to create binding obligations on the part of the Purchaser, as set out herein.

8.11 Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

8.12 Severability

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provision's validity or enforceability in any other jurisdiction.

8.13 Governing Law

This Agreement shall be governed by and construed in accordance with the Applicable Laws of the Province of Ontario and the Applicable Laws of Canada applicable therein and each of the Parties irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

8.14 Commission

The Purchaser acknowledges that there are no agent or broker fees or other commissions payable by the Vendor on the Purchase Price or otherwise in connection with the Transaction, and the Purchaser agrees to indemnify the Vendor against any claim for compensation or commission by any third party or agent retained by the Purchaser in connection with, or in contemplation of, the Transaction.

8.15 Actions to be Performed on a Business Day

Whenever this Agreement provides for or contemplates that a covenant or obligation is to be performed, or a condition is to be satisfied or waived on a day which is not a Business Day, such covenant or obligation shall be required to be performed, and such condition shall be required to be satisfied or waived on the next Business Day following such day.

8.16 No Registrations

The Purchaser hereby covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, or any other document providing evidence of this Agreement against title to the Property. Should the Purchaser be in default of its obligations under this Section, the Vendor may (as agent and attorney of the Purchaser) cause the removal of such notice of this Agreement, caution, certificate of pending litigation or other document providing evidence of this Agreement or any assignment of this Agreement from the title to the Property and the Purchaser shall be deemed to be in default of its obligations hereunder. The Purchaser irrevocably nominates, constitutes and appoints the Vendor as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement, any caution, certificate of

pending litigation or any other document or instrument whatsoever from title to the Property.

8.17 Strict Construction

Each Party acknowledges that it and its legal counsel have reviewed and participated in settling the terms of this Agreement and the Parties agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Agreement.

8.18 Capacity of Vendor

The Purchaser acknowledges that RSM Canada Limited has been appointed as receiver pursuant to the Receivership Order. The Purchaser further acknowledges and agrees that RSM Canada Limited acts solely in its capacity as receiver, without personal or corporate liability. The Purchaser acknowledges and agrees that RSM Canada Limited is entering into this Agreement solely in its capacity as the receiver and that RSM Canada Limited, its directors, agents, officers, partners and employees shall have no personal or corporate liability of any kind whatsoever, in contract, in tort, or at equity as a result of or in any way connected with this Agreement or as a result of the Vendor performing or failing to perform any of its obligations hereunder.

8.19 No Third-Party Beneficiaries

This Agreement shall be binding upon and enure solely to the benefit of each of the Parties hereto and its permitted assigns and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement. Nothing in this Agreement shall be construed to create any rights or obligations except between the Parties, and no person or entity shall be regarded as a third-party beneficiary of this Agreement. Each of the Parties agrees that all provisions of this Agreement, and all provisions of any and all documents and security delivered in connection herewith, shall not merge and except where otherwise expressly stipulated herein, survive the closing of the Transactions.

8.20 Planning Act

This Agreement is entered into subject to the express conditions that it is to be effective only if the provisions of Section 50 of the *Planning Act* (Ontario) and amendments, are complied with.

8.21 Non-Merger

Each Party hereby agrees that all provisions of this Agreement (other than the provisions of Article 4) shall forever survive the execution, delivery and performance of this Agreement, Closing and the execution, delivery and performance of any and all documents delivered in connection with this Agreement.

8.22 Expenses

Each Party shall be responsible for its own legal and other expenses (including any Taxes imposed on such expenses) incurred in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the Transaction and for the payment of any broker's commission, finder's fee or like payment payable by it in respect of the purchase and sale of the Purchased Assets pursuant to this Agreement.

8.23 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or electronic mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

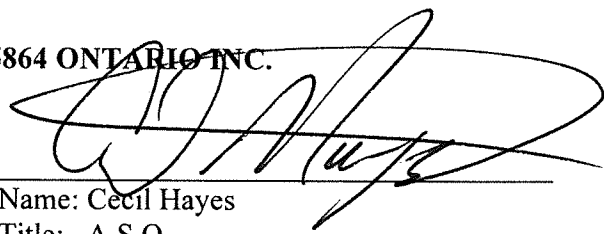
RSM CANADA LIMITED in its capacity as Court-Appointed Receiver of the property, assets, and undertakings of Fernwood Developments (Ontario) Corporation, and not in its personal or corporate capacity and without personal or corporate liability

Per: _____
Name: Bryan A. Tannenbaum
Title: President

I have the authority to bind the Corporation.

2815864 ONTARIO INC.

Per: _____
Name: Cecil Hayes
Title: A.S.O.



I have the authority to bind the Corporation

SCHEDULE A
LEGAL DESCRIPTION OF CONDOMINIUM UNITS

PIN 59420 – 0001 LT

UNIT 1, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0010 LT

UNIT 10, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0011 LT

UNIT 11, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0014 LT

UNIT 14, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0022 LT

UNIT 22, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0025 LT

UNIT 25, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0030 LT

UNIT 30, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0031 LT

UNIT 31, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0033 LT

UNIT 33, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0042 LT

UNIT 42, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0043 LT

UNIT 43, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0046 LT

UNIT 46, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0054 LT

UNIT 54, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0057 LT

UNIT 57, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0062 LT

UNIT 62, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0063 LT

UNIT 63, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0065 LT

UNIT 65, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0066 LT

UNIT 66, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0068 LT

UNIT 68, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0069 LT

UNIT 69, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0071 LT

UNIT 71, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0072 LT

UNIT 72, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0073 LT

UNIT 73, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0077 LT

UNIT 77, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0078 LT

UNIT 78, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0081 LT

UNIT 81, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0087 LT

UNIT 87, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0088 LT

UNIT 88, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0089 LT

UNIT 89, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0090 LT

UNIT 90, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0091 LT

UNIT 91, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0092 LT

UNIT 92, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0093 LT

UNIT 93, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0094 LT

UNIT 94, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0095 LT

UNIT 95, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0096 LT

UNIT 96, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS ASSET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0098 LT

UNIT 98, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0099 LT

UNIT 99, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0101 LT

UNIT 101, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0102 LT

UNIT 102, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0103 LT

UNIT 103, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0104 LT

UNIT 104, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0108 LT

UNIT 108, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0111 LT

UNIT 111, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0112 LT

UNIT 112, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0117 LT

UNIT 117, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0119 LT

UNIT 119, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0120 LT

UNIT 120, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0121 LT

UNIT 121, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0122 LT

UNIT 122, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0123 LT

UNIT 123, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0124 LT

UNIT 124, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

SCHEDULE B
LEGAL DESCRIPTION OF LANDS

PIN 58831 - 1862 LT

PART OF BLOCK 6, PLAN 51M983, PART 3 PLAN 51R40027; SUBJECT TO AN EASEMENT OVER PART 3 PLAN 51R40027 AS IN SC1189600; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS SIMCOE STANDARD CONDOMINIUM PLAN NUMBER 420 AS IN SC1354411; SUBJECT TO AN EASEMENT OVER PART 3 PLAN 51R40027 IN FAVOUR OF SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AS IN SC1354411; SUBJECT TO AN EASEMENT OVER PART 3 PLAN 51R40027 IN FAVOUR OF SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AS IN SC1496430; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS SIMCOE STANDARD CONDOMINIUM PLAN NUMBER 420 AS IN SC1496430; CITY OF BARRIE

SCHEDULE C
PERMITTED ENCUMBRANCES

- (a) any registered reservations, restrictions, rights of way, easements or covenants that run with the Condominium Units and Lands;
- (b) any registered agreements with a municipality or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunication service;
- (c) any minor easements for the supply of utility service to the Condominium Units and Lands or adjacent properties;
- (d) encroachments disclosed by any errors or omissions in existing surveys of the Lands or neighbouring properties and any title defect, encroachment or breach of a zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey of the Lands and survey matters generally;
- (e) the exceptions and qualifications set forth in the Land Titles Act (Ontario);
- (f) the reservations contained in the original grant from the Crown;
- (g) liens for Taxes if such Taxes are not due and payable;
- (h) Instrument No. SC966830 registered on March 6, 2012 being a Notice of Subdivision Agreement;
- (i) Instrument No. SC1129838 registered on May 12, 2014 being a Notice of Development Agreement;
- (j) Instrument No. SC1189600 registered on January 26, 2015 being a Transfer Easement;
- (k) Instrument No. SCP420 registered on October 24, 2016 being a Standard Condominium Plan;
- (l) Instrument No. SC1354411 registered on October 24, 2016 being a Condominium Declaration;
- (m) Instrument No. SC1359887 registered on November 8, 2016 being a Condominium By-Law No. 1;
- (n) Instrument No. SC1359888 registered on November 8, 2016 being a Notice Section 98;
- (o) Instrument No. SC1368462 registered on December 5, 2016 being a Condominium By-Law No. 2;
- (p) Instrument No. SC1496430 registered on March 9, 2018 being a Condominium Amendment to Declaration;
- (q) Instrument No. SC1499656 registered on March 26, 2018 being a Notice Section 98 Group Indemnity Agreement; and
- (r) Instrument No. SC1686283 registered on June 11, 2020 being a Notice of Security Interest.

SCHEDULE D
TENANT LEASES

APPENDIX F



Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

Electronically issued : 11-Feb-2020
Délivré par voie électronique
Kitchener

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Plaintiff

and

MARSHALLZEHR GROUP INC.

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of 85 Frederick Street
court office: Kitchener, Ontario
N2H 0A7

TO: MARSHALLZEHR GROUP INC.
465 Phillip Street, Suite 206
Waterloo, Ontario
N2L 6C7

CLAIM

1. The Plaintiff claims:
 - (a) damages in the amount of \$15,000,000;
 - (b) return of the sum of \$2,986,637 paid as lenders' fees, commitment fees, and amendment fees for the loans committed to by the Defendant;
 - (c) an accounting relating to the financing provided or to be provided by the Defendant, including all fees, bonuses and charges relating to same;
 - (d) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (e) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (f) the costs of this action on a substantial indemnity basis, plus all applicable taxes; and,
 - (g) such further and other relief as to this Honourable Court may seem just.

Background

2. The Plaintiff, Fernwood Developments (Ontario) Corporation ("**Fernwood**"), is a corporation incorporated pursuant to the laws of Ontario and carries on business as a builder and developer.

3. The Defendant, MarshallZehr Group Inc. (“**MZ Group**”), is a corporation incorporated pursuant to the laws of Ontario. It carries on business as a lender, mortgage broker and mortgage administrator. It provides syndicated construction and development financing to land developers throughout Ontario and elsewhere.

4. Fernwood acquired lands in the City of Barrie (85 Sydenham Wells, Barrie) to be developed as a 94-unit stacked townhouse phased condominium development known as Georgian Meadows (School House) (the “**Project**”). It was contemplated that the condominium units would be acquired by investors who would in turn rent those units to students attending Georgian College in Barrie.

5. The Project was to be constructed in three phases. Phase I was to consist of two, two-storey blocks of 16 units each. Phase II was to consist of two, two-storey blocks of 14 and 16 units. Phase III was to consist of two, two-storey blocks of 16 units each.

6. The cost consultant for the Project was Glynn Group Incorporated.

The MZ Group Financing

7. MZ Group agreed to provide financing for Phase I of the Project in the principal amount of \$13,750,000 pursuant to a Commitment Letter dated December 5, 2013 (“**First Commitment**”). The loan was secured by a first mortgage on the Project.

8. Construction of Phase I was delayed for approximately 12 months because of unexpected building permit issues with the City of Barrie. As result of the delays, the First Commitment was amended on March 17, 2014, July 18, 2016, and August 23, 2016.

9. MZ Group issued a further Commitment Letter dated September 20, 2016 (the “**Second Commitment**”, and together with the First Commitment, the “**Commitments**”), pursuant to which it agreed to lend Fernwood \$15,450,000 to refinance the existing MZ Group loan made pursuant to the First Commitment and to provide funds to complete the Project.

10. The Second Commitment was amended by letters dated May 17, 2017, April 17, 2018, and September 5, 2018. Pursuant to the Second Commitment, as amended, the principal amount to be loaned to Fernwood was \$19,950,000. The loan matured on September 1, 2019.

11. With respect to the Commitments, Fernwood paid to MZ Group a total sum of approximately \$2,986,637 in what MZ Group characterized as fees, charges and bonuses.

12. On the loan funds advanced to Fernwood, MZ Group charged interest rates ranging from 9.5% per annum to 14% per annum. The effective rate of interest taking into account the various additional fees, charges and bonuses taken by MZ Group was approximately 33% per annum.

MZ Group Security

13. Pursuant to the terms of the Second Commitment, MZ Group received security (collectively, the “**MZ Group Security**”) that included the following:

- (a) a first mortgage on the Project;
- (b) a General Assignment of Leases and Rents;

- (c) a General Security Agreement; and
- (d) the personal Guarantees of Rudi Zukowski and Jordan Zukowski.

14. It was an express or implied term of the Commitments, the MZ Group Security, and all amendments thereto that the parties owed each other a duty of good faith and fair dealing, that MZ Group would act in good faith in respect of the acceleration and enforcement of the MZ Group Security, and that MZ Group would advance funds pursuant to the Commitments in a timely fashion.

The Construction Process

15. The buildings included in Phase I of the Project are all completed and 24 of the 32 units in that Phase have been sold. The remaining 8 units are owned by Fernwood.

16. The buildings in Phase II of the Project have all been completed and 12 of the 30 units have been sold. The remaining 18 units are owned by Fernwood.

17. The buildings in Phase III of the Project are partially completed. One building is 95% complete to occupancy (and has been since August 2018) and the other is approximately 50% complete. None of those units have been sold.

18. Fernwood is a registered home builder with Tarion New Home Warranty Program, has registered all units in the Project under the Program, and has paid all required security deposits.

19. During the course of construction, MZ Group failed or refused to advance funds to Fernwood as agreed under the terms of its Commitments and in accordance with certificates

issued by the Project cost consultant. In some cases, approved draws were inexplicably delayed for weeks and even months, thereby putting Fernwood in default of its obligations to trades and suppliers and stalling completion of the Project.

20. Fernwood pleads, and the fact is, that MZ Group did not have funds to advance to Fernwood because of financial difficulties it was having with other projects it had committed to financing and with respect to repayment obligations to its investors.

The Marketing Process

21. In late 2016, Fernwood entered into a listing agreement with 2150659 Ontario Inc. c.o.b. Keller Williams Advantage (“**Keller Williams**”), a real estate broker, to sell units in the Project (the “**Listing Agreement**”). As part of the Listing Agreement with Keller Williams, it was agreed that rental income insurance would be provided to unit purchasers in order to facilitate unit sales to investors who may be unable to obtain conventional mortgage financing otherwise. In the first instance, this was to be arranged by Ai Guarantee Inc. (“**Ai**”) via RentSure Membership (Canada) Corporation (“**Rentsure**”), and subsequently came to be provided, directly or indirectly, by Nationwide Rentsure Canada Corporation (“**Nationwide**”).

22. In the fall of 2017, MZ Group demanded that Fernwood terminate its relationship with Keller Williams and retain Pensio Real Estate Group Inc. (“**Pensio Real Estate**”) as both listing agent and property manager for the Project.

23. Ai, Nationwide and Rentsure are related companies, and after some or all of Ai, Nationwide and Rentsure encountered financial difficulties, they were succeeded by related companies, ultimately Pensio Property Management Group Inc. (Nationwide, Ai, Rentsure, Pensio Real Estate, Pensio Property Management Group Inc., and their related companies are referred to herein collectively as the “**Pensio Group**”).

24. Upon the termination of Keller Williams as listing agent, it made a claim against Fernwood for damages for breach of contract. The matter was litigated pursuant to the arbitration provisions of the Listing Agreement. Although Fernwood defended the damages claim, MZ Group and Pensio Group demanded that Fernwood consent to a settlement that required payment to Keller Williams of the sum of \$991,240.18, inclusive of HST. Keller Williams subsequently obtained Judgment against Fernwood for the outstanding portion of that amount, plus additional costs as fixed by the Court.

Transfer of Control to Pensio Group

25. In late 2017 MZ Group also directed Fernwood to transfer control of the Project and of Fernwood’s operations to the Pensio Group (specifically, Nationwide). MZ Group stated that if Fernwood did not transfer control as directed, it would appoint a receiver for the Project. Fernwood’s guarantors were also threatened with claims on their guarantees and registration of Certificates of Pending Litigation against their properties.

26. MZ Group also represented to Fernwood that Pensio Group had arranged for a bulk sale of the remaining units in the Project (both those that had been constructed and those still to be constructed, totalling 58 units), and that it could conclude this sale in short order (the

“**Bulk Sale**”). Fernwood relied on this representation (the “**Bulk Sale Representation**”) in terminating the Listing Agreement with Keller Williams and in transferring control to Pensio Group.

27. Fernwood thereafter complied with MZ Group’s demands and threats, and executed documentation presented by Pensio Group, whereby control of the Project and Fernwood’s operations, including all banking and the collection of rents, was transferred to Pensio Group (specifically, Nationwide).

28. With the knowledge, and at the direction, of MZ Group, Pensio Group thereafter took control of all rental income from the Project notwithstanding that MZ Group held a General Assignment of Leases and Rents. Pensio has received all of the rental income from the Project from January 1, 2018, to the present, despite the fact that the rental insurance premiums on unsold units were paid in full in advance out of funds that should have otherwise been advanced by MZ Group for construction purposes. No certificate or policy of insurance has ever been produced to Fernwood by Pensio Group or MZ Group, and no payments have been made under such policies to Fernwood.

29. None of the rental income received by Pensio Group has been applied to payments owing by Fernwood to MZ Group pursuant to the Commitments, nor has Fernwood been provided with funds to pay operating expenses related to the Project such as utilities, internet, maintenance, and condominium fees (aside from two discrete occasions where Pensio Group paid the monthly internet and utility expenses).

30. In order to pay the expenses referred to in paragraph 29 hereof, the principal of Fernwood advanced approximately \$200,000 in personal funds to Fernwood.

31. After the transfer of control to Pensio Group, extensive discussions took place between MZ Group, Pensio Group and the principals of Fernwood with a view to concluding the Bulk Sale that MZ Group represented Pensio Group was in a position to conclude. The principals of Fernwood have co-operated in discussions regarding a variety of structures for such a transaction, but Pensio Group and MZ Group have failed to complete the Bulk Sale.

32. While Pensio Group has failed to deliver the Bulk Sale, MZ Group has otherwise resisted and thwarted efforts by the principals of Fernwood to complete the Project and sell the remaining completed units. MZ Group has refused to permit the sale or re-financing of individual units in order to generate cash flow to pay trades and aid in the completion of the Project, and it has refused to permit the reconfiguration of the units in Phases II and III to make them marketable to the public at large, rather than just investors seeking to rent to students.

33. The Bulk Sale Representation constitutes a fraudulent and negligent misrepresentation for which MZ Group is liable to Fernwood. The Bulk Sale Representation was false. Given the inherent duties of good faith and fair dealing that MZ Group and Fernwood owed each other, there was a relationship between MZ Group and Fernwood that gave rise to a duty of care in the making of the Bulk Sale Representation. MZ Group knew the Bulk Sale Representation to be false, or was negligent or reckless as to its truth. Fernwood acted reasonably in relying on the Bulk Sale Representation by terminating Keller Williams and

transferring control of the Project to Pensio Group, and Fernwood has suffered significant losses as a result.

Conflict of Interest

34. Fernwood pleads, and the fact is, that MZ Group had and continues to have other business dealings and relationships with Pensio Group with respect to other land development projects in Ontario for which MZ Group provides project financing.

35. In particular, Pensio Group provides rental guarantee insurance for other projects being financed by MZ Group in order to facilitate the sale of units in those projects.

36. MZ Group has preferred its interests in its relationship with Pensio Group to its obligations to Fernwood.

37. Fernwood pleads that investors who were interested in purchasing units in the Project were directed by Pensio Group to purchase units in a project in Woodstock, Ontario, that was financed by MZ Group. In total, 26 investors were directed from the Project to MZ Group's Woodstock project. As a result, all of the units in the Woodstock project were sold in early 2018, while units in the Fernwood Project remained unsold.

38. Fernwood alleges that MZ Group interfered in the completion of the Project in that it refused to advance funds to complete construction notwithstanding that such funds were certified for payment by the Project cost consultant, contrary to the terms of the Commitments.

39. Fernwood also alleges that MZ Group interfered in the marketing of the Project units by requiring it to transfer control of the Project and Fernwood's operations to Pensio Group, and with Pensio Group's complicity, directed investors who were prepared to purchase units in the Project to other projects in which MZ Group and Pensio Group had financial interests.

40. MZ Group permitted Pensio Group to collect all rental income from the Project (notwithstanding that it had a General Assignment of Leases and Rents) so that Fernwood could not use the funds to pay construction trades, Project operating costs, and loan payments to MZ Group.

41. MZ Group required Fernwood and its principal to enter into negotiations and several proposed transactions to transfer the Project to Pensio Group when it knew, or should have known, that such transactions would not be completed.

42. The discussions with Pensio Group culminated with a proposal in the summer of 2019 by MZ Group that the shares of Fernwood be sold to Pensio Group. The solicitors for MZ Group prepared a Share Purchase Agreement and an Inter-Creditor Agreement that provided for the sale of the shares of Fernwood to Pensio Group for the sum of \$23,142,000. Notwithstanding that the principal of Fernwood agreed to such sale, the transaction was not completed because Pensio Group refused to close and wrongfully alleged that Fernwood failed to provide appropriate financial information.

43. From approximately March 2018 to date, MZ Group refused or otherwise neglected to advance funds to Fernwood under the Second Commitment and also refused to permit

financing arranged by Fernwood to permit completion of Phase III of the Project and finishing work such as landscaping for the other Phases of the Project.

44. Since the transfer of control to Pensio Group, MZ Group has also refused to permit new sales of any of the completed units in Phases I or II still owned by Fernwood, continued to accrue interest on the outstanding amounts of the loans and permitted Pensio Group to collect all of the rental income from the Project for more than two years.

45. Fernwood was thereafter obliged to pay for Project expenses such as water, electricity, internet, and condominium fees, and legal fees relating to the registration of the Project condominium documents, without receiving funds from MZ Group, as committed by it, and without receiving any rental income.

46. In 2018, the initial phase of the condominium plan for the Project was registered and sales of units that were agreed to prior to Pensio Group taking control and which were in interim occupancy closed. MZ Group required that the proceeds of these sales be directed to its lawyer, who then held \$525,441.94 from the proceeds of unit sales for payment of HST for those unit sales. Inexplicably, those funds were improperly held by that law firm for approximately four months before they were finally remitted to Canada Revenue Agency. During that time, interest and penalties accrued on the amount of HST that was to be remitted and a lien was registered by Canada Revenue Agency against the Project lands. After those funds were finally remitted, there was an overpayment of Fernwood's HST liability.

47. MZ Group's actions constitute a breach of the duty of good faith and fair dealing that it owed to Fernwood under the terms of Commitments and the MZ Group Security.

48. MZ Group is liable to Fernwood for unlawful act civil conspiracy. MZ Group acted in concert and with a common design with Pensio Group and others in a manner that was contrary to the terms of Commitments and the MZ Group Security. MZ Group's actions were directed at Fernwood, and MZ Group knew or ought to have known that damage to Fernwood would result.

49. Fernwood's damages as a result of MZ Group's actions continue to accrue and to be calculated. Fernwood undertakes to provide full particulars of its damages prior to the trial of this action.

50. Notwithstanding MZ Group's numerous breaches of its obligations under the Commitments, and its refusal to permit sales of units in the Project, on January 21, 2020, MZ Group demanded payment of the sum of \$24,051,019.23 from Fernwood and on February 3, 2020, brought an Application for the appointment of a receiver for Fernwood and the Project.

51. Fernwood pleads and relies on the provisions of the *Business Corporations Act*, R.S.O. 1990, c. B.16 and the *Personal Property Security Act*, R.S.O. 1990, c. P.10.

- 15 -

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Lawyers for the Plaintiff

FERNWOOD DEVELOPMENTS (ONTARIO)
CORPORATION
Plaintiff

-and- MARSHALLZEHR GROUP INC.
Defendant

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
WATERLOO REGION

STATEMENT OF CLAIM

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Lawyers for the Plaintiff

APPENDIX G

**PALIARE
ROLAND**

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File 97267

February 9, 2021

Via email: iad@kwlaw.net

Irwin A. Duncan
Duncan, Linton LLP
45 Erb Street East
Waterloo, ON N2J 1L7

Dear Mr. Duncan:

Re: Fernwood Developments (Ontario) Corporation (“Fernwood”)

As you know, we are independent counsel to RSM Canada Limited, the Receiver of Fernwood.

The Receiver intends to bring a motion to the court on February 24, 2021 for, among other things, approval of the sale of all of Fernwood’s assets (the “Assets”) to an affiliate of MarshallZehr Group Inc. (“MZ”) by way of a credit bid of MZ’s debt.

The Assets to be sold include, among other things, Fernwood’s real property and its rights in the litigation claim commenced against MZ bearing court file no. CV-20-00000253-0000 (the “Litigation Claim”).

In the Receiver’s view, given the quantum of MZ’s current debt of approximately \$26 million and the relatively low offers received for Fernwood’s real property in August 2020, it is unlikely that any party will be in a position to provide an offer that is greater than MZ’s offer for all of the Assets (or any of them individually).

Nevertheless, before any sale to MZ’s affiliate is finalized, the Receiver wishes to inquire whether your clients have any interest in acquiring the Litigation Claim. If your clients are interested, please provide me with an offer to the Receiver for the Litigation Claim by no later than 5pm this Friday, February 12, 2021.

Yours very truly,
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Jeffrey Larry

c. B. Tannenbaum/A. Dhanani

APPENDIX H

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February 12, 2021
File No. 0041883

Jeffrey Larry
PALIARE ROLAND ROSENBERG
ROTHSTEIN LLP
155 Wellington Street West, 35th Floor
Toronto, Ontario M5V 3H1

VIA EMAIL
(jeff.larry@paliareroland.com)

Dear Mr. Larry:

Re: Fernwood Developments (Ontario) Corporation

The writer is assisting Irwin Duncan with this matter. We write in response to your letter of February 9, 2021.

We note that the Sale Process described in the Receiver's First Report, and approved of in the Order of Justice Dietrich dated July 7, 2020, related only to the Fernwood Owned Units and the incomplete Phase 3 residential units (as did the proposed advertisement at Appendix T of that report), and we were unaware of any process being undertaken that dealt with Fernwood's litigation claims. Accordingly, we are somewhat surprised that you are raising the issue of the litigation claims at this time. Please advise of what steps the Receiver has taken in this regard, including what steps have been taken in respect of the Pensio entities.

We have sought instructions from our client, but in the circumstances we will require additional time to consider our client's position and respond to your unexpected inquiry. Given that the litigation claims are not of such a nature that they will deteriorate, and given that the cost of holding those claims in abeyance is minimal, please confirm that the Receiver will be prepared to hold this issue in abeyance until we have had time to receive your response and consider the issue properly.

With respect to the proposed credit bid by MarshallZehr Group Inc. ("MZ"), we are also somewhat puzzled by the timing of this step, given that the offer deadline for the Sales


Process was July 30, 2020, is there some explanation for why this step is being taken now? In particular, we would like to know:

1. What bids were received in that Sales Process.
2. What steps has the Receiver taken to market the assets of Fernwood since then?
3. Has the property recently been appraised? If so, please provide us with a copy of any appraisals that the Receiver has obtained.
4. What has the Receiver done to protect and preserve the real property?
5. What are the proposed terms of the sale to MZ?

If you require some form of non-disclosure agreement in order to provide this information to us, please provide a draft to us for execution.

Yours very truly,

DUNCAN, LINTON LLP


Peter A. Hertz
PAH/bb

APPENDIX I

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File 97267

February 18, 2021

Via email: phertz@kwlaw.net

Peter A. Hertz
Duncan, Linton LLP
45 Erb Street East
Waterloo, ON N2J 1L7

Dear Mr. Hertz:

Re: Fernwood Developments (Ontario) Corporation ("Fernwood")

I refer to your February 12, 2021 letter.

The date for the Receiver's motion to approve the sale of all of Fernwood's assets to an affiliate of MarshallZehr Group Inc. ("MZ") has been adjourned to March 12, 2021.

Your clients should now have more than sufficient time to consider whether they have any interest in acquiring the litigation claim commenced against MZ bearing court file no. CV-20-00000253-0000 or any potential claims against Pensio and related entities (the "Litigation Claims"). In any case, the Receiver is not inclined to delay this matter further, particularly given its view that the aggregate consideration for all of the purchased assets (including the Litigation Claims) is materially in excess of any realization that the Receiver could possibly expect to achieve if the assets were marketed and sold separately.

If your clients are interested, provide me with an offer to the Receiver for the Litigation Claims by no later than 5pm on Thursday, February 25, 2021.

With respect to your specific inquiries about the Sales Process, certain of this information will be contained in the Receiver's Third Report to the Court, however the details about the offers received, any appraisals, and MZ's credit bid are being provided to the court on a confidential basis and cannot be disclosed to your client at this time.

Yours very truly,
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP



Jeffrey Larry
c. I. Duncan
B. Tannenbaum/A. Dhanani

APPENDIX J

DUNCAN, LINTON LLP
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February 25, 2021
File No. 0041883

Jeffrey Larry
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155 Wellington Street West, 35th Floor
Toronto, Ontario M5V 3H1

VIA EMAIL
(jeff.larry@paliareroland.com)

Dear Mr. Larry:

Re: Fernwood Developments (Ontario) Corporation

We write in response to your letter of February 18, 2021.

We are disappointed that the Receiver has declined to respond to the inquiries set out in our letter of February 9, 2021, which we thought to be almost entirely non-controversial.

Our inquiry regarding the steps that the Receiver has taken since the deadline for offers in the previously approved sales process is particularly relevant given the amount of time that has passed and the trend in market conditions – the average residential property sale price in the Barrie area has increased by more than 20% from July 2020 to January 2021. Given the significant change in market conditions, it is our view that it would be appropriate for the real property to be listed for sale and marketed again. Given current market conditions, it would also be prudent for the completed Fernwood-owned units to be listed individually.

Additionally, we repeat our request for information regarding what has been done with respect to Pensio. Quite frankly, we do not understand how it is that Pensio purported to terminate the insurance program given section 11 of the Order of Justice Hainey appointing the Receiver – was this done with the Receiver's consent?

In any case, our client has instructed us to make the following offer:

1. Jordan Zukowski ("Jordan") shall pay the sum of \$10,000 to the Receiver.

2. The Receiver shall assign all right, title and interest in the Litigation Claims, as that term is defined in your letter of February, 18, 2021.
3. The payment and the assignment set out in paragraphs 1 and 2, respectively, shall take place within 30 days of acceptance of this offer by the Receiver.
4. The Receiver shall give such further assurances and execute such further documents as may be reasonably required to give effect to the assignment of the Litigation Claims to Jordan.
5. 25% of the net proceeds of any settlement or final judicial determination of the Litigation Claims shall be paid to the Receiver upon receipt by the Plaintiff.

This offer is open for acceptance until 5:00 p.m. on March 4, 2021.

Please advise of the process the Receiver intends to follow in respect of bids for some or all of the Litigation Claims.

Yours very truly,
DUNCAN, LINTON LLP



Irwin A. Duncan
IAD/tb
c. Client

APPENDIX K

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File 97267

March 30, 2021

VIA EMAIL
iad@kwlaw.net

Irwin A. Duncan
Duncan, Linton LLP
45 Erb Street East
Waterloo, ON N2J 1L7

Dear Mr. Duncan:

Re: Fernwood Developments (Ontario) Corporation

We are writing in response to your letter dated February 25, 2021.

Mr. Zukowski's offer to buy the debtor's litigation claims against MarshallZehr is declined.

The aggregate amount that MarshallZehr is credit bidding for the debtor's assets, including the implied value attributed to the Litigation Claims, is far in excess of Mr. Zukowski's offer for the Litigation Claims (as defined our February 18, 2021 letter to you). As is evident from the terms of Mr. Zukowski's offer (including the fact that any meaningful realization is contingent on the successful prosecution of the Litigation Claims), it is clear that, on an aggregate basis, the offer is significantly lower than MarshallZehr's offer for all of the debtor's assets.

With respect to your request that the Receiver run an additional sales process: based on the results of the previous sales process, even if an increase in the residential property market such as the increase referred to in your letter is attributed to the Fernwood owned units, there is no reasonable prospect of generating a superior offer to the MarshallZehr bid. As a result, the Receiver is firmly of the view that it is not in the best interests of Fernwood's creditors to undertake the significant time and cost to run a second sale process at this time.

Similarly, there is no benefit to running a further sales process for just the Litigation Claims given that the aggregate consideration offered by MarshallZehr is far in excess of the total consideration that could reasonably be expected if the Litigation Claims were sold on an individual basis. The terms of Mr. Zukowski's offer reinforce this conclusion.

Regarding the Pensio insurance program, the Receiver wishes to advise that Pensio terminated its insurance program with third-party investors without the Receiver's consent.

Yours very truly,
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP



Jeffrey Larry
JL:mj

APPENDIX L

DUNCAN, LINTON LLP

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April 7, 2021
File No. 0041883

Jeffrey Larry
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VIA EMAIL
(jeff.larry@paliareroland.com)

Dear Mr. Larry:

Re: Fernwood Developments (Ontario) Corporation

Thank you for your letter of March 30, 2021.

Your response is unhelpful in moving this matter forward and permitting our clients to determine how they may wish to respond to a motion for approval of a sale to MarshallZehr that the Receiver apparently intends to proceed with.

To assist us in advising our client, we have the following inquiries:

1. Your references to the aggregate amount of the credit bid are unhelpful in understanding what the Receiver has done. Given that the Receiver has apparently, irrevocably made up its mind, there is no reason to maintain the confidentiality of the credit bid at this point – please provide it.
2. How is it that an implied value has been attributed to the Litigation Claims?
3. Has a valuation or opinion been obtained with respect to the Litigation Claims? If so, who gave such opinion(s) and what information was considered in that process?

4. You indicate that the Receiver is not prepared to run an additional sale process - if this is the case, why wasn't an agreement entered into after the initial sale process last summer (which expressly contemplated MarshallZehr making such a bid)?

You have still not responded to our inquiry as to what the Receiver has been doing with respect to the Property since the initial offer deadline last summer. More than eight months have passed! Additional professional fees, interest and other costs have been accruing for eight months now for no apparent justifiable reason. The additional fees, costs and interest accrue to the ultimate detriment of our clients, and it appears that the only beneficiary of this delay will be MarshallZehr, which will be obtaining the Property in the current volatile real estate market, at a price determined in a process undertaken last summer. What is the explanation or justification for the apparent preference being provided to MarshallZehr?

We look forward to hearing from you.

Yours very truly,
DUNCAN, LINTON LLP



Irwin A. Duncan
IAD/PAH/bb

APPENDIX M

Dhanani, Arif

From: Jeff.Larry@paliaroland.com
Sent: Thursday, February 4, 2021 11:45 AM
To: paul.daffern@daffernlaw.com
Cc: jane.barager@daffernlaw.com; dawn.viveiros@daffernlaw.com
Subject: RE: Fernwood Developments (Ontario) Corporation
Attachments: Jeff McKeever Plumbing.pdf; Doc2.docx; 2016-12-15 Georgian Meadows MZGI 72 Trust Advance Statement.pdf; 2017-05-24 Advance Statement Excel.pdf; 2017-07-11 Final Advance Statement.pdf; 2017-08-10 Final Advance Statement.pdf; 2017-12-20 Final Advance Statement .xls.pdf; 2018-02-16 Final Advance Statement Excel.pdf; 2018-08-31 GMSH Final Advance Statement (signed).pdf

Paul,

Thank you for your email.

My December 15, 2020 was circulated to counsel for the lien claimants including yourself, below. I am not sure why it did not come to your attention.

In any case, and to be clear, the Receiver has not yet determined the validity, quantum or priority of any of the liens claims. Rather, the Receiver has only attempted to determine the maximum amount of each lien claimant's possible priority claim so that the lien claimant will be properly protected for any priority dispute that may result in future. Ultimately, however, if there is a dispute about the priority, that will have to be addressed by the court.

As you know, MarshallZehr Group Inc.'s mortgage was granted in 2013. Attached are trust advance statements for the mortgage, as well as a summary of the advances. You will note that the statements show no advances were made on the mortgage following the registration of either of your client's liens.

Under Section 78 (without acknowledging or determining priorities in this case), a lien can have priority over a mortgage or building mortgage to the extent of any holdbacks required to be retained by the owner under Part IV of the Construction Act. The Owner's holdback obligations under Part IV of the Construction Act are limited to 10% of the price of the services or materials supplied under the applicable contract. A lien can also have priority over advances made under a mortgage following registration of a lien, however, the records provided to the Receiver shows this did not occur.

To the extent your client is suggesting that it is entitled to participate in the holdback on other contracts, we are not aware of such authority. If you have any authority to the contrary or a basis as to why your client's priority claim would exceed the holdback obligations in these circumstances, we would be pleased to consider it.

As requested, the Receiver's calculation of the maximum potential priority amount for each of your clients is as follows:

Duncan Drywall

We understand from your client's claim for lien and information supplied by your client that:

1. Duncan Drywall entered into a direct contract with the Owner, Fernwood Developments (Ontario) Corporation for the supply of drywall and related work (the "Contract") for the project known as the "School House Barrie"
2. The contract was for a price of \$240,000 plus HST

3. Duncan Drywall's claim for lien is the amount of \$178,195 plus HST (which does not include a claim for demobilization costs) and was registered on March 5, 2020
4. Duncan Drywall asserts that its services under its lien were undertaken between April 17, 2017 and January 30, 2020
5. Paragraph 13 of Duncan Drywall's statement of claim states that "The Plaintiff therefore claims priority pursuant to the Construction Lien Act over MarshallZehr Group Inc.'s mortgage ..."

In this case, given that your client's contract price is \$240,000 plus HST, the Owner's holdback obligations would be no more than \$24,000 plus HST.

Finally, as you also know, before a lien claimant can make a claim for priority, it must first establish the validity of the lien itself. The Receiver's records show that Duncan Drywall's invoices were 90 days outstanding as of October 31, 2019 in the amount of \$178,195 (its lien amount). In other words, it appears from the Receiver's records that Duncan Drywall's services under the lien were supplied prior to October 31, 2019. If that is correct, the lien may not have been registered within the deadlines required under the Construction Act.

Jeff McKeever Plumbing (JMP)

We understand from your client's claim for lien and information supplied by your client that:

1. JMP entered into a direct contract with the Owner, Fernwood Developments (Ontario) Corporation (the "Contract") for the Project
2. The Contract was for a price of \$211,989.63 plus HST. JMP asserts it completed the Contract
3. JMP's claim for lien is the amount of \$173,489.63 plus HST and was registered on Feb 13, 2020
4. JMP asserts that its services under its lien were undertaken between June 23, 2017 and Feb 13, 2020
5. JMP's statement of claim does not include a priority claim over the mortgage

In this case, given that your client's contract price is \$211,989.63 plus HST, the Owner's holdback obligations would be no more than \$21,198.96 plus HST. We note that the letter from JMP's previous counsel dated July 24, 2020 expressly confirmed that JMP's priority claim over the mortgage was in the amount of \$21,198.96.

Finally, we point out that the validity of JMP's lien itself appears to be in question. JMP's original Statutory Declaration (attached) was dated on December 9, 2019 and showed the entire amount of the lien (\$172,450) owing on that date. The date of the Statutory Declaration was then struck out and changed to Jan 9, 2020. The lien was registered Feb 13, 2020. Our information is that, in fact, JMP's work was indeed completed well before December 2019 such that its lien may well be out of time.

From: Paul Daffern <paul.daffern@daffernlaw.com>

Sent: January 26, 2021 3:25 PM

To: Jeff Larry <Jeff.Larry@paliarerland.com>

Cc: Jane Barager <jane.barager@daffernlaw.com>; Dawn Viveiros <dawn.viveiros@daffernlaw.com>

Subject: RE: Fernwood Developments (Ontario) Corporation

Jeff

Today is the first time I have seen your email dated December 15, 2020.

It appears that you are suggesting that my client Duncan Drywall is entitled to priority to a maximum of \$24,000.00 but that RSM is not prepared to admit that the priority is that amount yet.

It also appears that you are claiming that Jeff McKeever is entitled to a maximum priority of \$21,198.96 but again RSM is not prepared to admit that this is the amount of priority Mr. McKeever is entitled to.

I disagree with your conclusions and its my opinion that my clients are entitled to priority for the full amounts of their claims for lien including their legal costs.

I am interested in how you calculated the amount of the Priority Claims of my clients.

Please provide a detailed written explanation for your calculations.

Please also explain why the Receiver is not prepared to admit that any amount of my client's claims have priority.

Please also be advised That I concerned about why it has taken the Receiver so long to get to the point where you are suggesting that the lien claimants are entitled to a small percentage of the total amount of their Construction Liens.

Please specifically provide the details of every mortgage advance made by the mortgagee together with back up documentation to prove the dates of the advances.

Please also provide me with the details of the Construction Lien Trust Funds that the Mortgagee maintained out of the mortgage advances.

Time is of the essence to my clients.

Please advise me when I may expect to receive the requested information.

Yours very truly,

Paul J. Daffern

Paul J. Daffern Law Firm

48 High Street

Barrie, Ontario L4N 1W4

Tel: 705-725-9670 ext. 26

Fax: 705-725-8764

www.daffernlaw.com

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From: Jeff.Larry@paliarerland.com <Jeff.Larry@paliarerland.com>

Sent: January 26, 2021 12:24 PM

To: Paul Daffern <paul.daffern@daffernlaw.com>

Subject: FW: Fernwood Developments (Ontario) Corporation

Paul

May I please hear from you. I have heard from all other counsel and the Receiver intends to go to court shortly and wants confirmation on these numbers

From: Jeff Larry

Sent: December 15, 2020 9:12 AM

To: paul.daffern@daffernlaw.com; mmcluskey@millerthomson.com; 'kdoggett@millerthomson.com' <kdoggett@millerthomson.com>; jsmith@rzcldlaw.com

Subject: Fernwood Developments (Ontario) Corporation

Counsel:

As I believe you know, I am independent counsel to RSM Canada Limited, the receiver of Fernwood Developments (Ontario) Corporation.

We have conducted a review each of the lien claims for purposes of determining the potential priority claim of each of the lien claimants. These potential priority amounts are set out in the chart below. **I ask that you please confirm the amount of the potential priority claim on behalf of your respective client.**

To be clear, the Receiver has not made any final determination about the validity or quantum of the liens, nor any priority amount. Rather, at this stage, the Receiver is only trying to determine the aggregate amount of the potential priority claim so that those can funds can be held in connection with any sale of the property.

I look forward to hearing from you and if you have any questions, do not hesitate to contact me.

	<u>Lien Claimant</u>	<u>Quantum of Lien Claims</u>	<u>Potential Priority Claim (10% of value of services provided for each steam. Amount based on total contract value as stated in liens)</u>	<u>Counsel</u>
1.	Duncan Drywall	\$178,195 plus HST	\$24,000	Paul Daffern
2.	Ground Electrical Services	\$106,939.80	\$10,693.98	Michael McCluskey
3.	Jeff McKeever Plumbing	\$211,989.63	\$21,198.96	Paul Daffern
4.	Priority Mechanical Services Ltd.	\$231,154.55	\$107,098.77	Keith Doggett
5.	Nezz Electric	\$122,285.30	\$17,924.74	Michael McCluskey
6.	Mack Construction	\$28,740	\$2,874	James Smith

	Total	\$879,304	\$183,790.45	
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Jeffrey Larry, LL.B, MBA

Paliare Roland Rosenberg Rothstein LLP

155 Wellington Street West, 35th Floor

Toronto, ON M5V 3H1

t: 416.646.4330

f: 416.646.4301

c: 416.553.2789

e: jeff.larry@paliareroland.com

APPENDIX N

December 21, 2020

Via E-mail: jeff.larry@paliareroland.com

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1

ATTENTION: Jeffrey Larry

Dear Mr. Larry:

**Re: 2122201 Ontario Ltd. carrying on business as McKick Masonry
FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION and JORDAN ZUKOWSKI
Court/Estate No. 31-2661061 (District of Ontario/Division No. 03 – Barrie)
Our File No.: 86387**

Are you aware, we are legal counsel for both 2122201 Ontario Ltd. carrying on business as McKick Masonry (“**McKick**”) and Wolfenden Construction Inc. (“**Wolfenden**”). McKick and Wolfenden are both creditors of the bankrupt, Fernwood Developments (Ontario) Corporation (the “**Bankrupt**”). We write further to our correspondence of October 14, 2020 addressed to Bryan Tannenbaum, the Trustee in Bankruptcy, regarding our request for consent regarding a breach of trust claim.

As outlined in our correspondence, both McKick and Wolfenden supplied materials and/or services to the improvement of the Georgian Meadows (School House) Development located at 242 Penetanguishene Road, and 244 Penetanguishene Road or at 85 Sydenham Wells, Barrie Ontario (hereinafter referred to as “**the Project**”).

Firstly, it is the position of both McKick and Wolfenden that the proceeds of sale of any of the Project units for a trust pursuant to section 9(1) of the *Construction Act*, R.S.O.1990 c.C.30 (the “**CLA**”). As established by the Court of Appeal in *Urbancorp Cumberland 2 GP Inc. (Re)* 2020 ONCA 197, 2020 CarswellOnt 3403, the trust created by s. 9(1) can be effective in insolvency proceedings.

Secondly, to address the necessity of the Bankrupt to proceedings we note that the claims of McKick and Wolfenden against the Bankrupt and its principal survive any assignment in bankruptcy and that such liability (for breach of trust under the CLA) falls within the provisions of Subsection 178(1)(d) of the *Bankruptcy and Insolvency Act*.

Under both sections 8 and 9 of the CLA, the trust is created as between the owner, in this case the bankrupt, and the contractor, in this case McKick and Wolfenden. Section 13 provides that certain individuals can be held liable for breach of trust based on their conduct and the acts of the corporation. That is, there must first be a breach of trust by the corporation for there to be any liability of individuals. Hence, the corporation, in this case the Bankrupt, is a necessary party for the complete adjudication of the matters at issue.

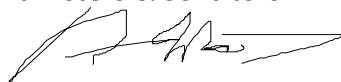
The case of *Metropolitan Toronto Condominium Corp. No. 831 v. Khan*, 2012 CarswellOnt 1135 (ONSC) sets out a paragraph 6 sets out the types of cases where the Court has typically lifted a stay of proceedings under the *Bankruptcy and Insolvency Act*. This includes:

- Actions against the bankrupt for a debt to which a discharge would not be a defence; and,
- Actions in which the bankrupt is a necessary party for the complete adjudication of the matters at issue involving other parties.

We kindly request you provide the Trustee's position no later than January 8, 2021, following which we will proceed with our motion and serve you in accordance with the *Rules of Civil Procedure*.

Please do not hesitate to contact the undersigned if you wish to discuss.

Yours very truly,
DOOLEY LUCENTI LLP
Barristers & Solicitors



Andrew Wood
AW/rc
E-mail: awood@dllaw.ca

APPENDIX O

Dhanani, Arif

From: Jeff.Larry@paliarerland.com
Sent: Thursday, February 11, 2021 12:25 PM
To: awood@dllaw.ca
Cc: mjenne@dllaw.ca; Elizabeth.Rathbone@paliarerland.com
Subject: RE: Fernwood/McKick

Andrew:

Thank you for the requested information.

As you note, both McKick and Wolfenden make a breach of trust claim under section 9(1) of the *Construction Act*.

Even if your clients can establish that they did, in fact, do the claimed work and would be entitled to advance a trust claim, such trust claim will not have priority over The MarshallZehr Group Inc. ("MZ")'s mortgage.

Section 9(1) of the *Construction Act* (reproduced below) provides that the proceeds of sale of the premises (subject to the improvement) constitute a trust in favour of trades with valid claims. Critically, however, the trust excludes amounts owing to a mortgagee as well as the reasonable expenses arising from the sale.

The Receiver will be bringing a motion returnable February 24, 2021 for, among other things, the approval of a sale of the property to a company affiliated with MZ by way of a credit bid of some of MZ's debt. There is no prospect of any recovery of any proceeds by the owner (or by the Receiver on behalf of the owner). The mortgagee itself (which has priority) will be suffering a shortfall. Therefore, there is nothing to which any trust claim could attach under Section 9(1).

The *Urbancorp* decision of the Court of Appeal (to which you refer) does not, in any way, change the analysis. It simply confirms that Section 9(1) can apply to a sale by a Receiver. In that case, there were net proceeds of sale to which a trust could potentially attach; in our case, there will not be.

Please let me know if you have further questions.

Construction Act

9(1) Where the owner's interest in a premises is sold by the owner, an amount equal to,

(a) the value of the consideration received by the owner as a result of the sale,

less,

(b) the reasonable expenses arising from the sale and the amount, if any, paid by the vendor to discharge any existing mortgage indebtedness on the premises,

constitutes a trust fund for the benefit of the contractor.

(2) The former owner is the trustee of the trust created by subsection (1), and shall not appropriate or convert any part of the trust property to the former owner's use or to any use inconsistent with the trust until the contractor is paid all amounts owed to the contractor that relate to the improvement.

From: Andrew Wood <awood@dllaw.ca>
Sent: February 9, 2021 9:07 AM
To: Jeff Larry <Jeff.Larry@paliareroland.com>
Cc: Molly Jenne <mjenne@dllaw.ca>
Subject: RE: Fernwood/McKICK

Jeff,

Further to your e-mail below, please see my response below for my respective clients along with the attachments specified for each client.

2122201 Ontario Ltd. (o/a McKICK Masonry) – Claimed amount: \$73,961.00

- 1) **Construction Contract** – there was a contract for work completed (and paid in-full for) regarding Block 6 of the Project that was retained by Jordan Zukowski (principal of Fernwood) with no copy provided to my client. General terms were invoices to be submitted by the 20th of each month/payment was to be remitted on the 20th of the following month.
- 2) delivered and outstanding invoices establishing the amounts being claimed
 - Invoice #636 – August 30, 2018 - \$67,348.00
 - Invoice #638 – October 19, 2018 - \$52,771.00
 - Invoice #639 – October 19, 2018 - \$3,842.00

\$123,961.00

 - There were three (3) draws/payments received on September 2, 2018 (\$25,000), October 30, 2018 (\$10,000) and March 22, 2019 (\$15,000)
- 3) See 2) above;
- 4) See 2) above – the invoiced amount include holdbacks.

Wolfenden Construction Inc. re Fernwood Developments – Claimed amount: \$36,914.00

***I had indicated \$41,462.25 but it appears that invoice #10263 was double-counted in error**

- 1) **Construction Contract** – there was a contract for work completed (and paid in-full for) regarding Block 6 of the Project that was retained by Jordan Zukowski (principal of Fernwood) with no copy provided to my client. General terms were invoices to be submitted by the 20th of each month/payment was to be remitted on the 20th of the following month.
- 2) delivered and outstanding invoices establishing the amounts being claimed
 - Invoice #10258 – June 26, 2018 - \$136,899.50
 - Invoice #10262 – July 31, 2018 - \$2,966.25 (Block 1 extras)

- Invoice #10263 – July 31, 2018 - \$4,548.25 (Block 2 extras)
\$144,414.00
- There were three (3) draws/payments received on September 10, 2018 (\$90,000), October 22, 2018 (\$7,500) and March 26, 2019 (\$10,000)

3) See 2) above;

See 2) above – the invoiced amount include holdbacks.

Thank you and I look forward to hearing from you with respect to the Receiver's position,
Andrew

Andrew Wood, Associate

awood@dllaw.ca



10 Checkley Street, Barrie, Ontario L4N 1W1

Tel: (705) 792-7963

Fax : (705) 792-7964

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The COVID-19 pandemic has changed business as usual. In accordance with recommendations made by government and health officials, our team will be working remotely until further notice. Our office has put in place a variety of measures to ensure this transition is as seamless as possible.

Our lawyers and staff will be answering calls and emails and will continue to provide our clients and parties the level of service they have come to expect. You can continue to reach our team via their direct line or email. Alternatively, you can contact our office at (705) 792-7963 or reception@dllaw.ca and one of our team members will respond as soon as possible. Thank you for your cooperation during this time.

From: Andrew Wood

Sent: January 26, 2021 10:12 AM

To: 'Jeff.Larry@paliareroland.com' <Jeff.Larry@paliareroland.com>

Cc: Molly Jenne <mjenne@dllaw.ca>

Subject: RE: Fernwood/McKick

Jeff,

Thank you for the e-mail- I'll be back to you very shortly (just confirming a couple items with my clients).

Thank you,

Andrew

Andrew Wood, Associate

awood@dllaw.ca



10 Checkley Street, Barrie, Ontario L4N 1W1

Tel: (705) 792-7963

Fax : (705) 792-7964

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From: Jeff.Larry@paliareroland.com <Jeff.Larry@paliareroland.com>

Sent: January 25, 2021 3:56 PM

To: Andrew Wood <awood@dllaw.ca>

Subject: RE: Fernwood/McKICK

Andrew:

As a follow up to our conversation, can you please provide me with the following for each of your clients:

1. the construction contracts;
2. delivered and outstanding invoices establishing the amounts being claimed;
3. a summary of the invoices rendered and payments received; and
4. a breakdown of the claimed amounts that are for holdbacks, due for progress draws or invoices for work within scope, and amounts claimed as extras that are outside of the scope of the contract.

Thank you,

From: Jeff Larry

Sent: January 12, 2021 9:51 AM

To: 'Andrew Wood' <awood@dllaw.ca>

Subject: RE: Fernwood/McKICK

Andrew

How about tomorrow some time between 9-10?

From: Andrew Wood <awood@dllaw.ca>

Sent: January 11, 2021 3:00 PM

To: Jeff Larry <Jeff.Larry@paliareroland.com>

Subject: Re: Fernwood/McKICK

Sure anytime after 2:00 pm- let me know when works best for you.

Thank you,
Andrew

Andrew Wood
Associate
Dooley Lucenti LLP
Sent from my iPhone

On Jan 11, 2021, at 1:47 PM, Jeff.Larry@paliareroland.com wrote: